

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4

5 -----x
6 IN RE: NATIONAL PRESCRIPTION) Case No.
7 OPIATE LITIGATION) 1:17-MD-2804
8 APPLIES TO ALL CASES) Hon. Dan A. Polster
9 -----x

10 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
11 CONFIDENTIALITY REVIEW
12

13 VIDEOTAPED DEPOSITION OF HENRY JOHN MORTELLITI, III
14
15 WASHINGTON, D.C.

16
17 WEDNESDAY, JANUARY 23, 2019
18

19
20 8:05 A.M.
21

22

23

24

Reported by: Leslie A. Todd

1 Deposition of HENRY JOHN MORTELLITI, III, held
2 at the law offices of:

3

4

5 ZUCKERMAN SPAEDER, LLP

6 1800 M Street, N.W.

7 Suite 1000

8 Washington, D.C. 20036

9 (202) 778-1801

10

11

12

13 Pursuant to notice, before Leslie Anne Todd,
14 Court Reporter and Notary Public in and for the
15 District of Columbia, who officiated in
16 administering the oath to the witness.

17

18

19

20

21

22

23

24

1 A P P E A R A N C E S

2 ON BEHALF OF PLAINTIFFS:

3 ERIC KENNEDY, ESQUIRE

4 WILLIAM BAKER, ESQUIRE

5 BRIAN ROOF, ESQUIRE

6 JAMES A. DeROCHE, ESQUIRE

7 WEISMAN, KENNEDY & BERRIS, CO., L.P.A.

8 101 West Prospect Avenue, Suite 1600

9 Cleveland, Ohio 44115

10 (216) 781-1111

11

12 ON BEHALF OF CVS HEALTH AND THE WITNESS:

13 GRAEME W. BUSH, ESQUIRE

14 ZUCKERMAN SPAEDER, LLP

15 1800 M Street NW, Suite 1000

16 Washington, D.C. 20036-5807

17 (202) 778-1801

18

19 ON BEHALF OF CARDINAL HEALTH:

20 KATELYN ADAMS, ESQUIRE

21 WILLIAMS & CONNOLLY LLP

22 725 Twelfth Street, N.W.

23 Washington, D.C. 20005

24 (202) 434-5107

1 APPEARANCES (Continued):

2

3 ON BEHALF OF McKESSON CORPORATION:

4 GABRIEL FULMER, ESQUIRE

5 COVINGTON & BURLING LLP

6 One City Center

7 850 Tenth Street, N.W.

8 Washington, D.C. 20001-4956

9 (202) 662-5261

10

11 ON BEHALF OF ENDO PHARMACEUTICALS AND PAR:

12 WREDE SMITH, ESQUIRE

13 ARNOLD & PORTER KAYE SCHOLER LLP

14 601 Massachusetts Avenue, N.W.

15 Washington, D.C. 20001-3743

16 (202) 942-5435

17

18 ON BEHALF OF WALMART:

19 CHRISTINE D. PROROK, ESQUIRE (Telephonically)

20 JONES DAY

21 77 West Wacker Drive

22 Chicago, Illinois 60601-1692

23 (312) 782-3939

24

1 APPEARANCES (Continued):

2

3 ON BEHALF OF AMERISOURCEBERGEN:

4 M. JANE BRANNON, ESQUIRE (Telephonically)

5 JACKSON KELLY, PLLC

6 175 East Main Street

7 Lexington, Kentucky 40507

8 (859) 288-2805

9

10 ON BEHALF OF CARDINAL HEALTH:

11 CHRISTOPHER N. DAWSON, ESQUIRE

12 (Telephonically)

13 WHELAN, CORRENTE, FLANDERS, KINDER & SIKET LLP

14 100 Westminster Street, Suite 710

15 Providence, Rhode Island 02903

16 (401) 270-4500

17

18 ALSO PRESENT:

19 STEPHANIE HACKMAN (Paralegal)

20 ZACH HONE (Trial technician)

21 DANIEL HOLMSTOCK (Videographer)

22

23

24

1 C O N T E N T S

2	EXAMINATION OF HENRY JOHN MORTELLITI, III	PAGE
3	By Mr. Kennedy	13
4	By Mr. Baker	190, 377
5	By Mr. Bush	374

6 E X H I B I T S

7 (Attached to transcript)

8	CVS-MORTELLITI DEPOSITION EXHIBITS	PAGE
9	No. 2 Title 21 Code of Federal Regulations,	
10	Part 1301 - Registration of	
11	Manufacturers, Distributors and	
12	Dispensers of Controlled Substances	28
13	No. 9 E-mail re DEA SOP 8-25-10.doc (with	
14	attachment), Bates CVS-MDLT1-	
15	0000088956 to 0000089025	100
16	No. 16 Business Idea Description, Submit to	
17	IS-Business-Idea mailbox, Bates	
18	CVS-MDLT1-000034175 to 000034176	129
19	No. 17 E-mail string re SOM Modifications,	
20	Bates CVS-MDLT1-000024523 to	
21	000024524	173
22	No. 18A E-mail re Logistics Business Support	
23	Requests - 2011-04-28, Bates	
24	CVS-MDLT1-000029864 to 000029866	177

1	E X H I B I T S (Continued)		
2	(Attached to transcript)		
3	CVS-MORTELLITI DEPOSITION EXHIBITS		PAGE
4	No. 22	CVS Pharmacy, Logistics, 2011	
5		Initiatives, January 28, 2011,	
6		Bates CVS-MDLT1-000018910 to	
7		000018945	170
8	No. 23	E-mail string re New BSR - Control	
9		Drug IRR Changes, Bates CVS-MDLT1-	
10		000034168 to 000034171	141
11	No. 24	E-mail string re A new fax has	
12		arrived from 4078585031 (Part 1 of	
13		1) on Channel 3, Bates CVS-MDLT1-	
14		000075542 to 000075547	152
15	No. 28	Conference Call invite, Bates	
16		CVS-MDLT1-000024539 to 000024552	101
17	No. 48	CVS Controlled Drug Manual:	
18		Suspicious Order Monitoring	
19		Procedure	104
20	No. 49	E-mail string re November 10, 2009,	
21		Bates CVS-MDLT1-000087889 to	
22		000087890	111
23			
24			

1	E X H I B I T S (Continued)		
2	(Attached to transcript)		
3	CVS-MORTELLITI DEPOSITION EXHIBITS	PAGE	
4	No. 111	E-mail re Agenda/Updates for	
5		Monday's staff meeting, Bates	
6		CVS-MDLT1-000103859 and 000103867	167
7	No. 126	Item Review Report, Bates	
8		CVS-MDLT1-000100763 to 000100768	156
9	No. 130	E-mail string re SOM Project Plan,	
10		Bates CVS-MDLT1-000114320 to	
11		000114328	68
12	No. 132	Chart entitled VIPER x PDMR, Bates	
13		CVS-MDLT1-000068377 to 000068381	77
14	No. 135	E-mail string re DEA day 3, Bates	
15		CVS-MDLT1-000010223 to 000010224	58
16	No. 139	Item Review Report, Bates	
17		CVS-MDLT1-000100775 to 000100850	38
18	No. 142	CVS Caremark, Year-End Review -	
19		2012 (Finalized)	74
20	No. 143	E-mail string re Prepared at the	
21		Request of Legal Counsel - Subject to	
22		Attorney Client Privilege, Bates	
23		CVS-MDLT1-000117715 to 000117718	358
24			

1	E X H I B I T S (Continued)		
2	(Attached to transcript)		
3	CVS-MORTELLITI DEPOSITION EXHIBITS	PAGE	
4	No. 209	E-mail re SOM - Reporting, Bates	
5		CVS-MDLT1-000033126 to 000033154	247
6	No. 506	E-mail string re IRR/SOM Retunement	
7		BSR_LOG_61148, Bates CVS-MDLT1-	
8		000057759	244
9	No. 521	E-mail string re Control Drug IRR	
10		important info, Bates CVS-MDLT1-	
11		000100370 to 000100373	335
12	No. 562	Portion of rough transcript (not	
13		attached hereto)	190
14	No. 562	June IRR Report (not attached hereto)	253
15	No. 562A	July IRR Report (not attached hereto)	257
16	No. 606	DEA, FDA, OSHA Regulatory Update,	
17		Bates CVS-MDLT1-000061121 to	
18		000061123	228
19	No. 607	SOM Program, Bates CVS-MDLT1-	
20		000002186	229
21	No. 610	E-mail string re The CVS Retunement,	
22		Bates CVS-MDLT1-000061141 and	
23		000114642 to 000114652	258
24			

1	E X H I B I T S (Continued)		
2	(Attached to transcript)		
3	CVS-MORTELLITI DEPOSITION EXHIBITS	PAGE	
4	No. 611	E-mail string re SOM Report	
5		Attorney Client Privilege, Bates	
6		CVS-MDLT1-000109623 to 000109625	268
7	No. 612	E-mail re SOM Update, Bates	
8		CVS-MDLT1-000088734	284
9	No. 614	E-mail string re Adjustment to the	
10		CVS SOM, Bates CVS-MDLT1-000110439	
11		to 000110441	292
12	No. 615	E-mail re Control Drug IRR Update,	
13		Bates CVS-MDLT1-000034183	295
14	No. 623	E-mail string re IRR Narratives,	
15		Bates CVS-MDLT1-000112597 to	
16		000112600	309
17	No. 624	E-mail re IRR Narratives, Bates	
18		CVS-MDLT1-000109849 and 000109843	
19		to 000109849	309
20	No. 625	E-mail re Control Drug Suspicious	
21		Order Monitoring.doc (with	
22		attachment), Bates CVS-MDLT1-	
23		000057736 to 000057738 and	
24		000083969 to 000083971	309

1	E X H I B I T S (Continued)		
2	(Attached to transcript)		
3	CVS-MORTELLITI DEPOSITION EXHIBITS		PAGE
4	No. 634	List I Chemicals (PSE, EPH) and	
5		Control Drug Policy & Procedure,	
6		CVS-MDLT1-000009812 to 000009815	344
7	No. 641	E-mail string re Attorney/Client	
8		Privileged Information, Bates	
9		CVS-MDLT1-000083855 to 000083856	353
10	No. 690	ARCOS Reporting, Bates CVS-MDLT1-	
11		000019007	339
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			

1 P R O C E E D I N G S

2 -----

3 THE VIDEOGRAPHER: We are now on the
4 record. My name is Daniel Holmstock. I am the
5 videographer for Golkow Litigation Services.
6 Today's date is January 23rd, 2019. The time is
7 8:05 a.m.

8 This deposition is being held at the law
9 offices of Zuckerman Spaeder LLP, 1800 M Street,
10 Northwest, Suite 1000, in Washington, D.C., in the
11 matter of In Re: National Prescription Opiate
12 Litigation, pending before the United States
13 District Court for the Northern District of Ohio,
14 Eastern Division.

15 The deponent is Mr. John H. Mortelliti.

16 Counsel for appearances will be noted on
17 the stenographic record.

18 The court reporter is Leslie Todd, who
19 will now administer the oath.

20 HENRY JOHN MORTELLITI, III,

21 and having been first duly sworn,

22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. KENNEDY:

1 Q All right, sir, my name is Eric Kennedy,
2 and I represent the plaintiffs in this case.

3 Do you understand that?

4 A Yes.

5 Q Could you please state your full name
6 for the record.

7 A It's Henry John Mortelliti, III.

8 Q And what is your professional address?

9 A One Berry Drive, Lumberton, New Jersey.

10 Q And who is your current employer?

11 A CVS Health.

12 Q And what is the relationship of CVS
13 Health to CVS Pharmacy?

14 A CVS Health had different businesses.
15 There's the pharmacy stores, Caremark, Omnicare.
16 There -- there's different branches. And now
17 Aetna.

18 Q So CVS Pharmacy would be a subsidiary of
19 CVS Health?

20 A It's one of the branches, yes.

21 Q What is your position?

22 A Director of Asset Protection Supply
23 Chain.

24 Q And how long have you held that

1 position?

2 A Since 2010.

3 Q Tell me about the duties and
4 responsibilities of your position.

5 A In my role, I oversee company loss from
6 the supply chain point of view. I oversee store
7 shortages. I also review government regulatory
8 visits. I have asset protection managers that
9 report to me. They're in each of the facilities.
10 And we oversee the audits as well as just the --
11 the entire supply chain to ensure the stores are
12 getting the product they need, no thefts in the
13 buildings, and overall safety of the employees.

14 Q When did you take that position?

15 A As director, it was summer of 2010.

16 Q And can you tell when you began the
17 position in the summer of 2010, what
18 responsibility did you have or relationship did
19 you have with controlled substances?

20 A We would oversee the auditing of the
21 pharmacy area, and my -- my role was to ensure
22 that all our managers were following the
23 guidelines of basically auditing the building,
24 from pick, pack to ship.

1 Q And when you say pick, pack and ship,
2 was that in relation to a particular distribution
3 center?

4 A It was the -- the DCs I covered at the
5 time.

6 Q Okay. And what were those DCs?

7 A 2010, off the top of my head, it was
8 either going to be the Mid-Atlantic or -- or the
9 Southeast. I -- I don't recall.

10 Q Prior to 2010 when you took that
11 position, what was your -- your job at CVS, if
12 any?

13 A I was the loss prevention manager of the
14 Lumberton distribution center. I started in
15 Lumberton in January of 1999 as a supervisor for
16 loss prevention.

17 Q And what were your duties and
18 responsibilities starting in January of '99?

19 A I would audit different departments for
20 CVS policy and procedure compliance. I also
21 oversaw the in-house safety program, as well as
22 store shortage research.

23 Q And did you hold that position then from
24 1999 to 2010?

1 A I was promoted to the manager of
2 Lumberton, and I'm going to say that may have been
3 the end of '99, early 2000. And I held that
4 position till I was director.

5 Q Now, CVS distributed -- distributes
6 hydrocodone products to CVS stores. You're aware
7 of that?

8 A Yes.

9 Q When did you first learn that CVS was a
10 distributor of hydrocodone products to CVS
11 pharmacies?

12 A When I was a supervisor.

13 Q And so that would have been in 1999?

14 A Yes.

15 Q What were your duties and
16 responsibilities in 1999 as it related to the
17 CVS distribution of -- of hydrocodones to CVS
18 pharmacies?

19 A We would just oversee the actual
20 shipments, ensure there were no store shortages,
21 and we shipped what we say we picked.

22 Q In 1999, what were your duties and
23 responsibilities in relation to suspicious order
24 monitoring of -- of hydrocodone products?

1 A I wasn't involved with it in 1999.

2 Q When was your first involvement with
3 suspicious order monitoring of -- of hydrocodones?

4 A It -- it was a while ago. I'm going to
5 say somewhere around 2008, 2009.

6 Q And you understand that hydrocodone is a
7 controlled substance?

8 A Yes.

9 Q You've known that since 1999?

10 A Yes.

11 Q You understand that it is a narcotic?

12 A Yes.

13 Q You understand that it is not just any
14 narcotic, but it is a narcotic that became a -- a
15 focus of what has been described as an opioid
16 crisis in this country. Do you understand that?

17 A I know there's a lot of talk about the
18 opioid situation.

19 Q And you understand the role of
20 hydrocodone in that opioid -- what you call a
21 situation?

22 A Yes.

23 Q And we'll get into more detail, but
24 just -- just to start, you understand that -- that

1 CVS had certain responsibilities with respect to
2 suspicious order monitoring as it relates to
3 hydrocodones.

4 A I knew that I was given a responsibility
5 to oversee a process during a certain time period.
6 As for the overall expectation, I just -- I just
7 followed the process when it came to me.

8 Q And that would have been in '08 and '09?

9 A Somewhere in there, yes.

10 Q In '08 or '09 when you first became
11 involved with suspicious order monitoring at CVS,
12 what was your official title at that point?

13 A I was a loss prevention manager.

14 Q At Lumberton?

15 A Yes.

16 Q Did you have any duties and
17 responsibilities beyond Lumberton in '08 and '09?

18 A I -- I -- when -- okay. I -- I believe
19 I had the Mid-Atlantic during this time period.

20 Q And so that would have involved what
21 distribution centers?

22 A The alignments changed almost every
23 year, so I'm not 100 percent sure, but it would
24 have been Fredericksburg, Lumberton, North

1 Augusta, and that may have been it at the time.

2 Q Who was your immediate supervisor in
3 '08, '09, when you took on this responsibility
4 with respect to the suspicious order monitoring?

5 A Frank Devlin.

6 Q What responsibilities were you given
7 then in '08, '09, with respect to suspicious order
8 monitoring?

9 A There was -- there was a green -- we
10 called it a green bar, but it was actually the
11 IRR. So I was reviewing the I -- the IRR for the
12 network.

13 Q Prior to be given this responsibility to
14 review these IRRs -- and we'll talk about that in
15 detail -- prior to being given that
16 responsibility, explain to us what your experience
17 was with suspicious order monitoring of controlled
18 substances.

19 A With -- prior to that my responsibility
20 was to ensure the overall accuracy for the
21 distribution centers.

22 Q When you say "accuracy" -- oh, I'm
23 sorry, did you finish?

24 A Yes.

1 Q When you say "accuracy," specifically
2 what are you referring to?

3 A That we shipped exactly what was
4 ordered.

5 Q Okay. And that would have been your
6 only experience that might relate to suspicious
7 order monitoring prior to being given this job,
8 correct?

9 A Aside from doing controlled drug
10 in-house audits, yes.

11 Q And the controlled in-house audits would
12 be -- basically that's an inventory process; is
13 that true?

14 A Yes.

15 Q When you were given this -- this
16 responsibility of beginning to review these IRR
17 reports in relation to controlled substances, tell
18 me about the training and the education that you
19 were provided by CVS.

20 A During -- during that time period, I was
21 working with Pam Hinkle. She was -- she was --
22 she had the experience with pharmacy. As for the
23 actual training itself, I -- I just don't recall
24 how -- how that -- all that went down.

1 Q Now, she had experience dealing at the
2 pharmacy level, correct?

3 A Warehouse.

4 Q Warehouse.

5 A Right.

6 Q All right. What materials were you
7 provided to -- to prepare you for your job in
8 reviewing IRRs?

9 A I -- I don't -- I don't remember.

10 Q Were you provided with a copy or did
11 anybody explain to you the Controlled Substances
12 Act before you took on this responsibility?

13 A I -- I don't remember.

14 Q Did anybody explain to you or show you a
15 copy of the federal regulations as it related to
16 the duties and responsibilities of a distributor
17 of -- of opioids?

18 A I don't remember.

19 Q Did anybody provide you with -- with any
20 of the DEA letters that had been sent to
21 distributors in '06, '07, and a second letter in
22 '07, so that you could have a better understanding
23 of your responsibilities?

24 A I don't remember.

1 Q Did anybody sit down and explain to you
2 what the overarching responsibilities were of a
3 distributor with respect to the distribution of
4 opioids in 2008 when you began this role?

5 A I don't remember.

6 Q And if anybody would have given you that
7 responsibility or provided you with that material,
8 you say it would have been Pam Hinkle?

9 A It would either have been Pam Hinkle,
10 Frank Devlin, possibly someone in corporate. I --
11 I don't recall the actual transition time period.

12 Q Tell me, what was Mr. Devlin's
13 experience in relation to suspicious order
14 monitoring of controlled substances when you began
15 your role in 2008?

16 A I don't -- I don't know what his
17 experience was.

18 Q Now, you said you began to review this
19 IRR report. That probably would have been 2009,
20 correct?

21 A Somewhere in that time period.

22 Q Tell the jury what an IRR report is.

23 A It's an inventory review report.

24 Q Did Mr. Devlin sit down and explain to

1 you what an inventory review report was?

2 A I don't remember.

3 Q Did Pam Hinkle explain to you what an
4 inventory review report was?

5 A I don't remember the transition period
6 at that time.

7 Q Do you know -- do you have any memory
8 who sat you down and said, This is an inventory
9 review report?

10 A I -- the only thing I recall was when I
11 was getting it, Frank filled me in and told me it
12 was coming. I -- I don't remember who from
13 corporate reviewed it with me. I just don't
14 recall.

15 Q When you say "corporate," what are you
16 referring to?

17 A Someone from Rhode Island.

18 Q And who would they be employed by?

19 A CVS.

20 Q Did anybody explain to you the
21 importance and the significance of this report as
22 it related to CVS's responsibility to monitor
23 suspicious orders of narcotics?

24 A Yeah, I -- I'm -- I don't recall how it

1 was explained, but being a narcotic itself and the
2 understanding of the report, I realized that it
3 was very important.

4 Q Did anybody explain to you what was
5 going on in the country with respect to
6 hydrocodones in this crisis and the role CVS was
7 to play in somehow combatting that crisis?

8 A During that time, again, I -- I don't
9 recall the exact transition of -- of taking that
10 over. My -- my job was this is the procedure and
11 this is what the expectation is, and that's how I
12 performed it.

13 Q All right. When you say you were told,
14 This is the procedure and these are the
15 expectations, tell me what was explained to you
16 about the procedure and what were you told about
17 the expectations.

18 A The importance of the IR -- the IRR,
19 when -- when I was reviewing the IRR.

20 Q Who explained to you the importance of
21 the IRR?

22 A Again, I -- I just don't remember.

23 Q And what was the expectation that was
24 communicated to you?

1 A Well, the expectation was to look for
2 orders of interest.

3 Q When you were provided with -- or had
4 taken this job in 2008 and '09, what was your
5 understanding of CVS's responsibility or duty with
6 respect to suspicious order monitoring?

7 A Not to release any order that we deemed
8 an order of interest.

9 Q And what that means is not to ship any
10 order of a narcotic that you deemed to be an order
11 of interest?

12 A Right.

13 Q Until you had completed some sort of
14 review or investigation of that order, true?

15 A Right.

16 Q Were you sent to any DEA seminars before
17 you began your -- your job in 2008 or 2009 as it
18 related to suspicious order monitoring?

19 A I don't remember the dates, but I -- I
20 attended some NADDI, N-A-D-D-I, seminars.

21 Q Would that have been before you took on
22 your responsibility?

23 A I -- I don't remember.

24 Q Let's go to January of 2006. CVS was

1 distributing hydrocodone products to its -- its
2 stores, its pharmacies in 2006, correct?

3 A Yes.

4 Q You were at a DC at that point in time.

5 A Yes.

6 Q So you were aware of that at the DC.

7 A Yes.

8 Q And in 2006, given your responsibilities
9 at the distribution center, were you aware of the
10 fact in 2006 that CVS had certain responsibilities
11 in relation to its distribution of hydrocodone
12 narcotics?

13 A We -- we looked at the control cage as
14 high responsibility, which is why we did the
15 audits, the random audits and random inventories.

16 Q So you knew and you understood that CVS
17 in 2006 did have a responsibility in relation to
18 the distribution of controlled substances. You
19 understood that?

20 A I understood that it was my position and
21 my job to ensure that we did what we could to make
22 sure the stores got exactly what they ordered, and
23 nothing was missing or diverted.

24 Q Okay. So you basically in 2006, you --

1 in your position you were monitoring for theft,
2 correct?

3 A We -- we were monitoring for -- for
4 accuracy as well.

5 Q All right. What did you understand in
6 2006 to be CVS's duties and responsibilities with
7 respect to suspicious order monitoring?

8 A Again, I -- I really didn't have the
9 thought process along those lines. It was my job
10 to ensure that we could account for every bottle
11 of every controlled drug.

12 Q Did you have any understanding of the
13 responsibilities -- CVS's responsibility at the --
14 at the distribution center in relation to
15 monitoring each and every order as to whether or
16 not it was suspicious?

17 A At that time period, I -- nothing
18 outside of my role.

19 Q Who had the role in 2006 at the
20 distribution center to -- to monitor suspicious
21 orders?

22 A I don't know.

23 Q Did anybody, to your knowledge?

24 A I -- I have no idea.

1 (Exhibit No. 2 was premarked for
2 identification.)

3 BY MR. KENNEDY:

4 Q I'm going to show you what has been
5 marked as Exhibit 2, if we could.

6 MR. BUSH: Is this the one for the
7 witness?

8 MR. KENNEDY: Yes.

9 BY MR. KENNEDY:

10 Q Exhibit 2, do you see Title 21, Code of
11 Federal Regulations? Do you see that up at the
12 top?

13 A Yes.

14 Q And then underneath that, 1301.74, if
15 you look down to (b), we're going to read through
16 (b).

17 Now, (b) states that: "The registrant
18 shall design and operate a system to disclose to
19 the registrant suspicious orders of controlled
20 substances."

21 Do you see that?

22 A I do.

23 Q That first sentence of this
24 regulation -- and I'll tell you this regulation is

1 from 1971. Okay?

2 Were you aware of this regulation from
3 1971 in your role at the distribution center in
4 2006?

5 A In 2006, I -- I -- I may or may not have
6 seen this. I don't remember.

7 Q But it indicates that the registrant --
8 and CVS you understand would be a registrant that
9 would be subject to this regulation. You knew
10 that, did you not?

11 A Again, in 2006, my -- my position at
12 that time wasn't -- wasn't that deep into where --
13 where it went in 2008 and so forth, but I just
14 knew that my -- my job in the distribution center
15 was to ensure that we can account for the
16 inventory and the accuracy of the shipments.

17 Q Well, let me ask you this: In 2006,
18 what you have come to know about this regulation,
19 can we agree that this regulation that CVS shall
20 design and operate a system to disclose to the
21 registrant suspicious orders of controlled
22 substances, that regulation applied to CVS, did it
23 not, in 2006?

24 A I -- again, I -- that was above my pay

1 grade at that time. I didn't have anything to do
2 with this during that -- during that time period.

3 Q Well, let me ask you, did you ultimately
4 become a manager of the DC?

5 A I did.

6 Q And would you have had overall authority
7 over that distribution center?

8 A I had overall authority to audit and
9 investigate our inventory and our shipments.

10 Q Who was senior to you at -- at the
11 distribution center?

12 A Nobody at the distribution center.

13 Q All right. And so -- and tell me then,
14 in 2006 at your distribution center where nobody
15 was senior to you, tell me in 2006 whether or not,
16 according to this regulation, CVS had designed and
17 was operating a system to disclose to the
18 registrant suspicious orders of controlled
19 substances.

20 A Let me -- I'll back that up. When I say
21 no one was over me in the distribution center, our
22 department was paid out of finance. We were like
23 a third party in the DCs. So the DCs would have a
24 distribution center director, ops manager,

1 pharmacy manager.

2 MR. KENNEDY: All right, I'll move to
3 strike.

4 BY MR. KENNEDY:

5 Q If you would just answer my question, if
6 you would, sir.

7 MR. BUSH: Objection. He gave -- he
8 clarified an answer. That's perfectly
9 appropriate.

10 MR. KENNEDY: Fine.

11 BY MR. KENNEDY:

12 Q If you could answer my question, please.

13 A Repeat the question.

14 Q In 2006, tell me, according to this
15 regulation, at the DC where you were the manager,
16 tell me about the system that was designed and
17 operated to disclose to the registrant, CVS,
18 suspicious orders of controlled substances.

19 A I wasn't involved with and I don't know
20 who did it.

21 Q With -- as the manager, tell me about
22 the system that was in existence, if any, in 2006
23 that -- that fulfilled the obligation of this
24 regulation that says: "Shall design and operate a

1 system to disclose to the registrant suspicious
2 orders of controlled substances."

3 A If there was a process in place, it
4 would have went through the pharmacy manager to
5 hold the orders. I -- I don't know. I just -- I
6 wasn't involved in this at all at that time.

7 Q So as the manager of the DC, you don't
8 know of a process that was in place.

9 A I don't know of a process or who was
10 responsible for it, no.

11 Q Was anybody responsible for it?

12 A I don't know.

13 Q Were you at the DC every day --

14 A Yes.

15 Q -- as part of your job?

16 A Yes.

17 Q How many years were -- were you at that
18 DC?

19 A From January '99.

20 Q Until 2008?

21 A Actually, I'm still hubbed there.

22 Q All right. And you were the manager of
23 that DC for how many years?

24 A The loss prevention manager for five,

1 six -- six years, seven years.

2 And when we say "manager of the DC," I
3 was the loss prevention manager. I wasn't the DC
4 ops manager or -- or pharmacy manager, production
5 manager. We -- again, we reported to a different
6 entity so we could be a neutral part of the audit.

7 MR. KENNEDY: Okay. I'll move to
8 strike.

9 BY MR. KENNEDY:

10 Q At corporate headquarters in this period
11 of time from 2006 to 2009, who at corporate
12 headquarters -- let's go to CVS Pharmacy -- who at
13 CVS Pharmacy was responsible for suspicious order
14 monitoring?

15 A From 2006 till 2009, I -- I don't know.

16 Q And you understand the regulation that
17 we just read through, that came into existence in
18 1971. You understand that?

19 A Okay.

20 Q So the period we're talking about in
21 2006 is some 35 years after that regulation came
22 into place. Do you understand that?

23 A Mm-hmm.

24 Q Let's -- let's move to 2009, if we

1 could.

2 Well, let me ask you this before we move
3 to 2009. In 2006, did anybody show you the letter
4 that was received by CVS from the DEA outlining
5 the duties and responsibilities of a distributor
6 in relation to suspicious order monitoring? Did
7 anybody show you that letter in '06?

8 A I don't recall.

9 Q In 2007, the DEA sent two letters to
10 distributors, again outlining the duties and
11 responsibilities of a distributor in relation to
12 controlled substances in the distribution. Did
13 anybody show you those letters in 2007?

14 A I don't remember.

15 Q Did they show those letters in 2008?

16 A I don't remember.

17 Q Were you shown those letters in 2009
18 when you took on this new position to review
19 the -- the controlled substance reports?

20 MR. BUSH: Objection.

21 THE WITNESS: I don't remember.

22 BY MR. KENNEDY:

23 Q Now, our records indicate that -- that
24 this IRR report was not really delivered to -- to

1 CVS until late 2008, December of 2008.

2 Would you disagree with the timing of
3 that?

4 MR. BUSH: Objection.

5 You can go ahead and answer.

6 THE WITNESS: Okay. I -- I can't agree
7 or disagree. I -- I don't know.

8 BY MR. KENNEDY:

9 Q If that's true, then you wouldn't begin
10 to review the IRR narcotic reports until 2009. Is
11 that consistent with your memory, 2009 is when you
12 began to review?

13 A I -- I don't recall the exact year.

14 Q Now, the IRR report that you were
15 reviewing, did that cover all controlled
16 substances being sold by CVS pharmacies?

17 A I -- I believe it did, but I don't
18 remember.

19 Q Well, were you doing it just for your
20 distribution center or just for a particular
21 region of distribution centers, or were you
22 reviewing --

23 A Oh.

24 Q -- the report for the entire country?

1 A Okay. No, I was doing it for the
2 country.

3 Q All right. And were you also reviewing
4 the PSE orders?

5 A Yes.

6 Q So you were reviewing both reports.

7 A Yes.

8 Q At that point in time when you began
9 to -- to review this -- and I apologize if I've
10 asked you -- but we've come to this time frame of
11 the beginning of '09, at that point in time did
12 anybody sit you down and show you the Controlled
13 Substances Act or the regulation with respect to
14 suspicious orders that we looked at or any of the
15 DEA letters that had been sent out in '06 and '07?

16 MR. BUSH: Objection.

17 THE WITNESS: I don't -- I don't
18 remember any exact letters during that process.

19 BY MR. KENNEDY:

20 Q Tell me about the IRR report.
21 Specifically what did it contain? What was the
22 information in the report when you began to look
23 at it in '09?

24 A And again going off memory, there was an

1 algorithm that would flag particular orders by
2 drug, and when an item would flag, we would view
3 it as an item of interest, an order of interest.

4 Q And then you would do a review.

5 A Do a review.

6 Q Would you stop the order of interest at
7 the distribution center from being shipped prior
8 to your review?

9 A Yes.

10 Q So basically the algorithm would --
11 would create a score for each order, correct?

12 A Yes.

13 Q And if the score was above a certain
14 level, that would trigger a review, it would flag
15 the order for a review.

16 A Mm-hmm.

17 Q Was that the process?

18 A Yes.

19 Q And just looking at the controlled
20 substance IRR report, can we agree that daily
21 there would be hundreds of orders flagged
22 nationally for your review?

23 A For the controlled substance?

24 Q Yes.

1 A Definitely not daily. I -- I don't -- I
2 don't recall hundreds flagging either.

3 Q Well, did the number of orders that were
4 flagged, did that change over time or did it
5 become greater in '09 and then greater in '10?

6 A If there was -- just -- just the system
7 in general, it was steady. If there was something
8 that would come up that would cause more -- more
9 items to generate when the IRR -- that would cause
10 the IRR to expand.

11 And when we're talking controls, cough
12 syrup is a good example, cough and cold season,
13 prometh would cause the IRR to grow because cough
14 syrup had codeine in it. So there were situations
15 where the IRR would -- would be larger during
16 certain periods of time.

17 (Exhibit No. 139 was premarked for
18 identification.)

19 BY MR. KENNEDY:

20 Q Let me show you Exhibit 139.

21 A Okay.

22 Q Is that a typical IRR? Is that what
23 that report is?

24 A This is an IRR. I don't know if it's a

1 typical one. This one seems pretty thick.

2 Q Well, this is 75 pages, isn't it? Look
3 at the Bates 775 to 850. This is a 75-page IRR.

4 A Okay.

5 Q And you understand that this is for one
6 day for one distribution center. Correct?

7 A I'm looking at it, and it does appear to
8 be that, yes.

9 Q How many distribution centers were there
10 in '09?

11 A Maybe nine, ten, eleven. Somewhere in
12 there.

13 Q And about how -- take a look at -- pull
14 out any individual page and tell me how many
15 flagged orders of a controlled substance there are
16 on each page.

17 A Well, I'm looking at the date, and again
18 it's November 30th. You're in flu season, you're
19 in cough and cold season. I don't know how many
20 of these were driven by codeine cough syrups.

21 Q Sir, I asked you how many per page.
22 That was my question.

23 A How many per page, it looks like five.

24 Q And we've got 75 pages, 5 times 75 is

1 close to 500, close to 400 -- 400, right?

2 A Yeah, 375 -- 150, 3 -- yep, 375.

3 Q And this is for one of ten distribution
4 centers, and you were looking at IRRs for the
5 entire country, all distribution centers, true?

6 A True.

7 Q In addition to an IRR -- and this is a
8 daily report, right?

9 A Yes.

10 Q And in addition to this daily report
11 that you were looking at beginning in '09, you
12 were also looking at the PSE report, true?

13 A Yes.

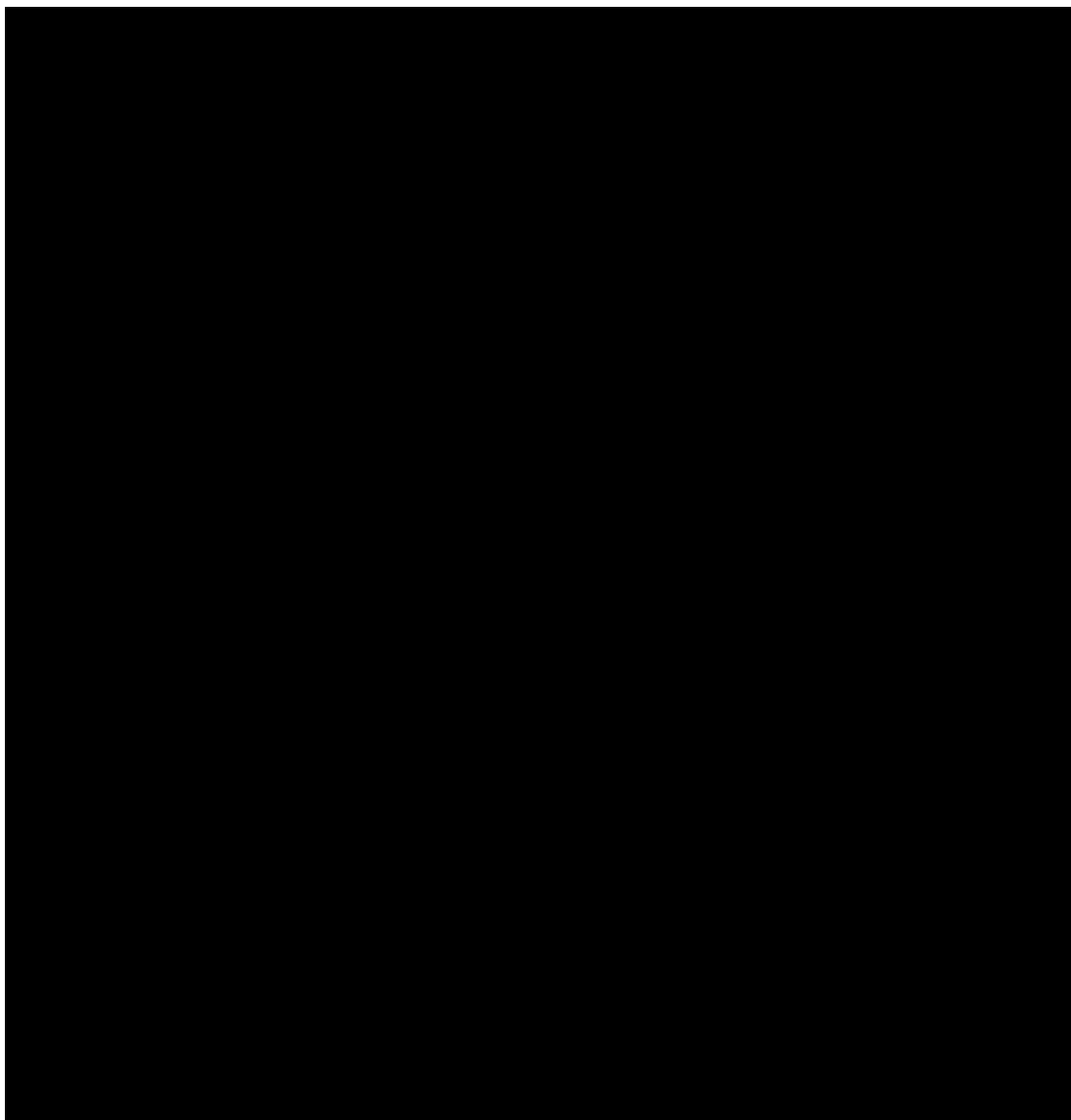
14 Q And the PSE report, would that be again
15 hundreds of -- of orders that you would also have
16 been looking at in addition to the hundreds of
17 orders of controlled substances?

18 A I don't remember that many on a typical
19 IRR.

20 Q This period of time, '09 and into '10
21 when you were looking at the IRR, were you the
22 only person nationally looking at the IRR every
23 single day for CVS?

24 A For a period of time I was.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15



16 Q In addition to your responsibilities in
17 '09 and 2010 to review these IRRs daily, what were
18 your other job responsibilities?

19 A Just to oversee my -- my area.

20 Q The same job responsibilities that you
21 had had since 1999?

22 A No, at this point we added an extra head
23 in Lumberton. So there was a manager and
24 supervisor on each shift to pick up the slack in

1 Lumberton.

2 Q When was that person added?

3 A I don't recall the exact date.

4 Q 2008, '07, '06, '05? Give me the year.

5 A I -- I would be guessing. Maybe 2007,
6 2008.

7 Q So you had a set of responsibilities at
8 your distribution center and for that region in
9 '07 and '08, and then this was added to your
10 responsibilities, this reviewing the PSE, daily
11 IRR and the controlled substances IRR, true?

12 A Yes.

13 Q You also had some responsibilities
14 during this period with the development of a
15 suspicious order monitoring policy, did you not?

16 A I was asked for my opinions. There were
17 policies being sent to me for feedback. As for
18 actually writing, I don't recall actually writing
19 any policies.

20 Q When you were reviewing the -- the IRR
21 controlled substances report in '09 and 2010,
22 could you tell the jury about the written policies
23 and procedures that were in place at CVS to guide
24 you in your responsibility.

1 MR. BUSH: Objection.

2 You can answer.

3 THE WITNESS: I -- I don't know. I
4 don't recall again the policies. I had a process
5 in place, and I followed the process.

6 BY MR. KENNEDY:

7 Q No, I'm asking about what were the
8 written policies and procedures provided you by
9 CVS to guide you in your responsibility to review
10 the IRR.

11 A I don't recall.

12 Q Were there any?

13 A I don't remember.

14 Q How many -- how much time have you spent
15 preparing for this deposition today, this
16 testimony?

17 A Oh, gosh. A couple of days, off and on.

18 Q During that preparation time, did
19 anybody ever show you any written policies and
20 procedures that were in place and utilized by you
21 in 2009 and 2010 to review this IRR report?

22 MR. BUSH: Objection.

23 THE WITNESS: I was -- I was shown
24 policies and procedures. Which ones were -- were

1 reviewed with me at that time period, I don't
2 recall.

3 BY MR. KENNEDY:

4 Q Vernazza -- Mr. Vernazza, do you know
5 who that is?

6 A Yes.

7 Q He indicated that he spoke with you or
8 met with you on four occasions to talk about
9 policies and procedures.

10 Do you remember that?

11 A We had calls, yes.

12 Q Did he inform you of any policies and
13 procedures that were in place in 2009 and 2010
14 with respect to what you were doing for CVS?

15 MR. BUSH: Objection.

16 If that answer -- if that question calls
17 for any privileged communications with
18 Mr. Vernazza, then I instruct you not to answer.
19 You can answer with respect to the meetings or
20 calls that you had with Mr. Vernazza relating to
21 his testimony for CVS as a CVS representative, if
22 you can distinguish between the two.

23 THE WITNESS: I -- I don't recall what
24 was privileged and what was on the record.

1 BY MR. KENNEDY:

2 Q Well, let me ask you, when you spoke
3 with him, did you say or did you tell him, Hey, I
4 was -- I was looking at these IRRs in 2009 and
5 '10, and these were the policies that -- that were
6 provided to me to tell me what to do? Did you
7 tell him that?

8 MR. BUSH: Objection. Same objection on
9 privilege grounds.

10 THE WITNESS: Yeah, I -- I -- I told him
11 the same thing I just told you, I don't recall
12 going off a particular policy. I went off of the
13 process.

14 BY MR. KENNEDY:

15 Q Well, did he tell you, Hey, we've been
16 looking and searching the documents at CVS, and we
17 found these policies that -- that were probably
18 guiding you in your job to review the IRR? Did he
19 say that to you?

20 MR. BUSH: Objection. Privileged.

21 You can answer to the extent you had the
22 conversation with him about his testimony as a
23 corporate representative.

24 THE WITNESS: Yeah. Again, I don't

1 remember what -- what we spoke about when -- in --
2 in what kind of platform.

3 BY MR. KENNEDY:

4 Q Let me -- let me kind of wrap it up.
5 When you were given this responsibility by CVS on
6 top of your other duties in 2009, do you have any
7 memory of, number one, any policies and procedures
8 to guide you or any specific training that you
9 were provided in order for you to carry out
10 this -- this new job?

11 MR. BUSH: Objection. Compound.

12 BY MR. KENNEDY:

13 Q Any memory.

14 MR. BUSH: Objection.

15 THE WITNESS: I -- I just don't remember
16 the details, and I don't want to -- I don't want
17 to assume that I remember under oath. I just -- I
18 don't remember the details.

19 BY MR. KENNEDY:

20 Q What is clear, though, from your memory
21 is that prior to 2009, prior to being given this
22 job that you told us was very important, you had
23 no prior experience reviewing suspicious order
24 monitorings pursuant to any type report.

1 MR. BUSH: Objection.

2 BY MR. KENNEDY:

3 Q Would that be true?

4 MR. BUSH: Objection.

5 THE WITNESS: Not in the process of what
6 I was doing after I started it.

7 BY MR. KENNEDY:

8 Q Correct. You had never seen an IRR
9 report prior to this, correct?

10 A No.

11 Q You had never seen a suspicious order
12 monitoring report prior to this, correct?

13 A I don't recall.

14 Q Who made the determination as to
15 specifically what you were to do with your review
16 of this IRR? Who decided?

17 A Frank Devlin was the person who assigned
18 it to me.

19 Q And did he sit you down and say
20 specifically, This is what you are to do with
21 respect to each IRR?

22 A I don't remember if I worked with Frank,
23 if I worked with Pam or if I worked with the
24 third-party consultants. I just don't recall. At

1 one point or another I worked with all of them.

2 Q And you don't know whether Mr. Devlin
3 had any experience with a -- an inventory report
4 for controlled substances, do you?

5 A I have no idea, no.

6 Q Did you create a daily report when you
7 began this process in 2009, a daily report as to
8 your activities as it related to your review of
9 the IRR?

10 A If I remember correctly, I did not use a
11 daily report when I first started. I actually
12 notated my information on the IRRs.

13 Q Were you required to keep notations?

14 A For -- for -- yes, for three years.

15 Q You were required -- in 2009 when you
16 were given this, you were told to provide
17 documentation of -- of any of your reviews?

18 A No, I just knew that anything that had
19 to do with pharmacy, we held for three years.

20 Q And you were -- were you told you needed
21 to document every review?

22 A I -- I don't recall if I was told or
23 not, but I -- I did put the notes on each review.

24 Q The report would -- would flag what

1 might -- clearly might be hundreds of orders a
2 day. Correct?

3 A Sometimes it may only be five pages
4 total. It wasn't always a hundred -- hundred
5 pages.

6 Q All right. But there were days when
7 there was a hundred pages and there were hundreds
8 of orders, right?

9 A Yes.

10 Q And in addition to that, you also had to
11 look at the PSE flagged orders, correct?

12 A Yes.

13 Q And you had to review it every single
14 day, true?

15 A Yes.

16 Q So you had to review it on the days when
17 there was 15 pages and you had to review it on the
18 days there were 50 pages, correct?

19 A Yes.

20 Q And you had to review it on the days
21 when there was a `hundred pages, true?

22 A Yes.

23 Q And you understood that -- I think you
24 told us you at least understood this was very

1 important, true?

2 A Yes.

3 Q When you would see a flagged order on a
4 day when there were hundreds, tell us what you
5 would do.

6 A I would go through and review whether or
7 not there was a pattern of a particular drug that
8 may be flagging that were wide. And when they're
9 as thick as this, I usually -- I usually find
10 that -- that the root cause would be, and I used
11 the prometh as an example, cough and cold season
12 could make this report go from five pages to a
13 book this thick. So when those items flagged
14 validated cough and cold season, you validated
15 that's happening everywhere in the network.

16 And then I would go through and review
17 for all the other controlled drugs with an
18 emphasis on the drugs that I would review first,
19 being street drugs -- drugs that had street value,
20 I would go through and do those first, and then do
21 the rest of them.

22 Q All right. Number one, you said you
23 would look at all of these orders, even on the
24 days where there were hundreds, and you would look

1 for a pattern, correct?

2 A Yes.

3 Q In trying to identify a pattern, were
4 you looking within the four corners of the IRR
5 report?

6 A I don't -- I don't know what you mean.

7 Q Were you looking at materials other than
8 the report itself when you were identifying
9 patterns, the first thing you said you were doing?

10 A Oh, I would use other resources. If I
11 saw cough and cold, I would work with my field
12 partners to ensure that we do have a cough and
13 cold season in effect.

14 Q So that's the pattern for cough and
15 cold.

16 A Well, I'm using that as one example
17 because I remember that standing out in the fourth
18 quarter, which -- which is right around this --
19 this IRR that you gave me earlier.

20 Q You have a flag on hydrocodone, which
21 you will see flagging of hydrocodones there.

22 A Mm-hmm.

23 Q Tell me what would you look at to
24 determine whether or not there was a pattern in

1 relation to hydrocodone in 2009 and '10 when you
2 were reviewing the IRR.

3 A I wouldn't use a pattern for
4 hydrocodone. Hydrocodone, street drugs are --
5 they're -- they're not seasonal, so I would
6 automatically freeze these.

7 Q Okay. So, first of all, when you talk
8 about pattern, you're looking for seasonal
9 patterns, true?

10 A I'm looking for drugs that have seasonal
11 patterns.

12 Q Okay. So hydrocodones, you would not be
13 looking for patterns, true?

14 A No patterns for hydrocodone.

15 Q Okay. Tell me then when a hydrocodone
16 flags -- and "flagging" means it's potentially
17 suspicious, true?

18 A Well, it's of interest.

19 Q Of interest. Well, and that's -- that's
20 potentially suspicious, that's of interest, same
21 thing?

22 A Well, it becomes suspicious when we
23 don't root cause it.

24 Q I said potentially suspicious. Whatever

1 is flagged is potentially suspicious, true?

2 A If it's -- I -- I mean, everything on
3 this report is potentially suspicious.

4 Q All right. But when you say an "order
5 of interest," you -- what you mean is you're
6 interested in reviewing it because it might be
7 subject to diversion.

8 A Correct.

9 Q And diversion is what you're trying to
10 prevent, true?

11 A Yes.

12 Q And diversion is the -- is the movement
13 of narcotics from legitimate channels into
14 illegitimate channels.

15 A Yes.

16 Q And these illegitimate channels, you
17 understood at that point in time that's what was
18 killing a lot of Americans was illegitimate
19 channels of hydrocodones and other controlled
20 substances.

21 MR. BUSH: Objection.

22 THE WITNESS: I really didn't even look
23 at it that broadly. I looked it as my job to make
24 sure every single drug in this report was

1 legitimate, no matter what the drug was. If it
2 wasn't legitimate, I wasn't going to let it go.

3 BY MR. KENNEDY:

4 Q Okay. Let's go back to hydros then.
5 You're not looking for patterns when you looked at
6 the IRR in 2009 for hydrocodones. What do you do
7 with the hydrocodones that are flagged as of
8 interest or potentially suspicious?

9 A Freeze the orders within the
10 distribution centers. I would contact the field
11 VIPER analyst in those areas. I would also
12 contact the regional loss prevention managers for
13 them to do an investigation.

14 Q And you did that in 2009 up to October
15 of 2010 for every flagged hydrocodone order. Is
16 that your testimony?

17 A Yes.

18 Q How long would these orders remain
19 freezed?

20 A Until they were cleared by the field.

21 Q How long would that take?

22 A For the most part, a lot of the stores
23 were within range. Sometimes the same day,
24 sometimes two days because they wanted to do more

1 investigation.

2 Q And so it's -- it's your testimony that
3 for every hydrocodone order that was flagged in
4 the country, every day you would contact the field
5 VIPER analyst for them to do an investigation and
6 the regional loss prevention manager to do an
7 investigation. Is that your testimony?

8 A There could be times where one of those
9 guys weren't available, but one of them would be
10 involved.

11 Q So if we were to take the testimony
12 of -- of those two folks, they would tell us that
13 every single day they were investigating
14 hydrocodone orders sent to them by you in 2009.
15 That's what they'll say?

16 A I'm not sure if it would be every day,
17 but they would definitely tell you that I was
18 having them running around a lot. They were --
19 they were very vocal.

20 Q Hydrocodone orders were flagged every
21 single day in the country, were they not, every
22 day?

23 MR. BUSH: Objection.

24 THE WITNESS: I don't recall every day.

1 I don't know.

2 BY MR. KENNEDY:

3 Q For the, what is it, 5- to 7,000 CVS
4 stores and pharmacies in 2009?

5 A Yeah, I -- I'm assuming that many, yes.

6 Q And it would be your testimony that you
7 were contacting distribution centers to stop
8 hydrocodone orders every single day?

9 MR. BUSH: Objection.

10 THE WITNESS: I would contact them if it
11 was flagged.

12 BY MR. KENNEDY:

13 Q And there was flagged hydrocodones every
14 day if you look at the IRRs, correct?

15 MR. BUSH: Objection.

16 THE WITNESS: I don't recall every day.

17 BY MR. KENNEDY:

18 Q But these field VIPER analysts and
19 regional loss prevention managers should be
20 telling us that you were contacting them just
21 about every day to begin reviews and
22 investigations of hydrocodones. That should be
23 their testimony, correct?

24 A If it was in their area, yes.

1 Q And in 2009, tell me who -- give me the
2 names of the different field VIPER analysts that
3 you would have been contacting every day about
4 hydrocodone flagged orders.

5 MR. BUSH: Objection.

6 THE WITNESS: Matt Listowsky.

7 BY MR. KENNEDY:

8 Q And where -- where was he located?

9 A I believe he was in the Northeast.
10 Dennis Wilkinson.

11 Q And where was he located?

12 A He was in the Midwest. There was a
13 Southeast gentleman, he had a British accent, I
14 cannot think of his name. We've had a lot of
15 turnover since then. I -- I don't remember.

16 Q So according to your testimony, then in
17 2009 into 2010, you would have been contacting DCs
18 across the country to stop hydrocodone orders.

19 A Yes.

20 Q And that would be -- given what we know,
21 that would be -- you would be contacting DCs daily
22 in this country to stop hydrocodone orders because
23 they had been flagged, true?

24 MR. BUSH: Objection.

1 THE WITNESS: If they were flagged, I
2 would contact them.

3 BY MR. KENNEDY:

4 Q And say, Stop the orders.

5 A Freeze the order, yes.

6 Q And who would you contact at the DCs?

7 A I would contact the loss prevention
8 manager and the pharmacy manager.

9 Q Of the DCs?

10 A Yes.

11 Q How would you contact them?

12 A Phone calls.

13 MR. KENNEDY: Give me Exhibit 135.

14 (Exhibit No. 135 was premarked for
15 identification.)

16 BY MR. KENNEDY:

17 Q Exhibit 135, look at the front page of
18 that. Do you see it's an e-mail from Terrence
19 Dugger? Do you see Terrence Dugger?

20 A Yes.

21 Q That he's sending an e-mail. Do you
22 know who Terrence Dugger is?

23 A Yes. He was the loss prevention manager
24 in Indianapolis at the time.

1 Q In Indianap- -- and that's a
2 distribution center, true?

3 A Yes.

4 Q And this is dated August 26, 2010. Do
5 you see that?

6 A Yes.

7 Q He's sending this e-mail to Frank
8 Devlin. And was he your boss?

9 A Frank Devlin is, yes.

10 Q And a copy of this to Sean Humphries.
11 Who is Sean Humphries?

12 A He was my counterpart who oversaw
13 Indianapolis at the time.

14 Q All right. It says: "Subject "DEA
15 Day 3." Do you see that?

16 A Yes.

17 Q And this is an e-mail -- we'll go
18 through it -- this is an e-mail about a DEA
19 inspection that was going on, and Terrence Dugger
20 is reporting this to -- to your boss. Do you see
21 that?

22 MR. BUSH: Objection.

23 THE WITNESS: Yes.

24 BY MR. KENNEDY:

1 Q Look at bullet point -- the last bullet
2 point on page 10223. Do you see that, it starts
3 with "I shared"?

4 A Oh, yes.

5 Q It starts with "I shared," that bottom
6 bullet point, and it states: "I" -- and I think
7 that that's Terrence Dugger from the distribution
8 center. "I shared with her" -- and that would be
9 the DEA inspector -- "I shared with her the
10 suspicious order monitoring report IRR, and she
11 asked how often I received it. I told her daily
12 and weekly, but I have not received the file in a
13 few months as the report was being tweaked. I
14 told her that it was monitored corporately by John
15 Mortelliti. She asked what happens when he calls
16 regarding information on the report. I told her
17 that I have never received a call regarding
18 information from the report."

19 Never received a call from you. Is that
20 consistent with your memory?

21 A I do remember terminating Terrence for
22 his performance. But, no, this does not sound
23 familiar with my memory at all.

24 Q Didn't you just tell us that you were

1 going through these IRRs, these hundreds of IRRs
2 every day, and then if a hydrocodone was flagged,
3 you were calling the DC to stop the order daily?

4 A Could I take a minute to read this?

5 Q Absolutely.

6 But, sir, please answer my question.

7 Didn't you just tell us that you reviewed the IRR
8 daily, and when hydrocodones were flagged, you
9 would call the DC that very day to stop the order?

10 A Yes.

11 Q And now we have a gentleman who says he
12 hasn't -- you never called him. Is that what he
13 says?

14 A I'm -- I'm going to read this. I don't
15 know the context of the e-mail yet.

16 Q All right.

17 A (Peruses document.)

18 Q Have you read it?

19 A I did.

20 Q All right. Let's go to the second page
21 of that.

22 A Okay.

23 Q Now that you got a chance to read it,
24 and start with the sentence "She," and "she" would

1 be the DEA?

2 MR. BUSH: Objection.

3 BY MR. KENNEDY:

4 Q Do you agree that "she" is making
5 reference to the DEA investigator on the second
6 page?

7 A Okay.

8 MR. BUSH: Objection.

9 BY MR. KENNEDY:

10 Q The sentence that starts with "She
11 asked," now that you got a chance to read it -- so
12 let me ask you, "She asked what happens when he
13 calls regarding information on a report. I told
14 her that I never received a call regarding
15 information from the report."

16 Did I read that right, now that you've
17 had a chance to review this?

18 A Yeah, it's in here.

19 Q Let me ask you, the IRR report itself --

20 A Mm-hmm.

21 Q -- you've reviewed tens of thousands of
22 these, have you not?

23 A Tens of thousands reports or --

24 Q Items on those reports.

1 A I -- I reviewed them all during that
2 time period.

3 Q All right. Tell me what conclusions
4 from the IRR report itself can you draw as to
5 whether or not an order is suspicious?

6 A We're talking about hydro?

7 Q Let's look at hydro.

8 From the report itself, what conclusions
9 can you draw, if any, from the information
10 contained in the report?

11 A Okay. Well, as for the report itself,
12 this -- this looks like the time period where data
13 was lost for three months. We had a time period
14 where historical data fell off --

15 Q I don't want to talk about that. We
16 will talk about that in detail.

17 I just want to -- in a general sense,
18 when you would look at an IRR report --

19 A Mm-hmm.

20 Q -- you would have the score that would
21 be above a certain level so it would flag,
22 correct?

23 A Yes.

24 Q Generally, what other information on

1 that report, just the report itself, allowed you
2 to or assist you in making the determination as to
3 whether or not this order of interest is indeed
4 suspicious?

5 A For hydro, I -- I went after all the
6 hydro. I went after all the cocktail drugs,
7 street drugs. I worked with DEA Agent Donna
8 Walker. She gave me a list of drugs to look out
9 for for this particular program, and I posted it
10 on my wall. It's still hanging there today. And
11 I reviewed every single one of those drugs and
12 viewed them all as suspicious if they were on this
13 report.

14 MR. KENNEDY: Okay. I'm going to move
15 to strike.

16 BY MR. KENNEDY:

17 Q You've got to listen carefully.

18 MR. BUSH: Objection.

19 MR. KENNEDY: He is not even close.

20 BY MR. KENNEDY:

21 Q Listen very carefully --

22 MR. BUSH: That's not true. He answered
23 your question. I'm sorry you don't like the
24 answer. You can move to strike. It's not -- the

1 judge will decide.

2 MR. KENNEDY: The judge will decide.

3 BY MR. KENNEDY:

4 Q But my question is real simple. From
5 the IRR report itself --

6 A Mm-hmm.

7 Q -- tell me what information -- other
8 than the score, what information is there on that
9 report that would assist you -- if any, would
10 assist you in determining whether or not that
11 order was suspicious.

12 A If it flagged, it would be an item of
13 interest.

14 Q Correct. And we agree that there is no
15 other information that you would be able to
16 utilize on that report itself that would assist
17 you in your review and investigation of that
18 order. True?

19 A For hydrocodone, I would err on the side
20 of caution. I also erred on the side of caution
21 for the street drugs.

22 MR. KENNEDY: Okay. I'm going to move
23 to strike.

24 BY MR. KENNEDY:

1 Q Listen very carefully. What information
2 is there on the IRR, other than the score, that
3 you used and assisted you in determining whether
4 or not the order was suspicious?

5 MR. BUSH: Objection.

6 THE WITNESS: I -- for -- depending on
7 the drug, like in the e-mail you just gave me, it
8 appears Tussionex.

9 BY MR. KENNEDY:

10 Q We're talking about hydrocodone.

11 A For hydrocodone, if it's on there,
12 I'm -- I'm reviewing it as suspicious or --

13 Q All right. And what information in your
14 review -- what information on the IRR itself, if
15 any, would assist you in that review?

16 A Nothing. The fact that it's there.

17 Q That's all I want. Thank you.

18 When you would send or contact the field
19 VIPER analysts -- let's start with the field VIPER
20 analysts -- with a flagged potentially suspicious
21 order of hydrocodone, tell me specifically what
22 the field VIPER analysts would do in their review
23 of that order.

24 MR. BUSH: Objection.

1 THE WITNESS: The VIPER analysts were
2 the subject matter experts for exceptions. So
3 they would take that information. How they went
4 through their different reporting -- exception
5 reporting, I wasn't there for it. I know they
6 used specific software reporting to -- to actually
7 review what I would send them, but as for step by
8 step, I'm not sure.

9 BY MR. KENNEDY:

10 Q You say that they used software in order
11 to evaluate an order of hydrocodone. Is that your
12 testimony?

13 A They used exception reporting and
14 whatever else they did. I -- again, they were the
15 subject matter experts on -- on investigating.

16 Q When you said they used exception
17 reporting, what is that?

18 A We had a program VIPER in the field at
19 the time.

20 Q And what else other than VIPER would
21 they use?

22 A I don't know offhand.

23 Q And we're talking about the time frame
24 of 2009 and 2010, correct?

1 A Yeah, I don't know.

2 Q Have you ever heard of the term
3 "MicroStrategy"?

4 A Yes.

5 Q And can we agree that MicroStrategy was
6 not available in 2009 and 2010 to the VIPER
7 analysts?

8 A I don't --

9 MR. BUSH: Objection.

10 THE WITNESS: I don't know.

11

12

13

14

15

16

17

18

19

20

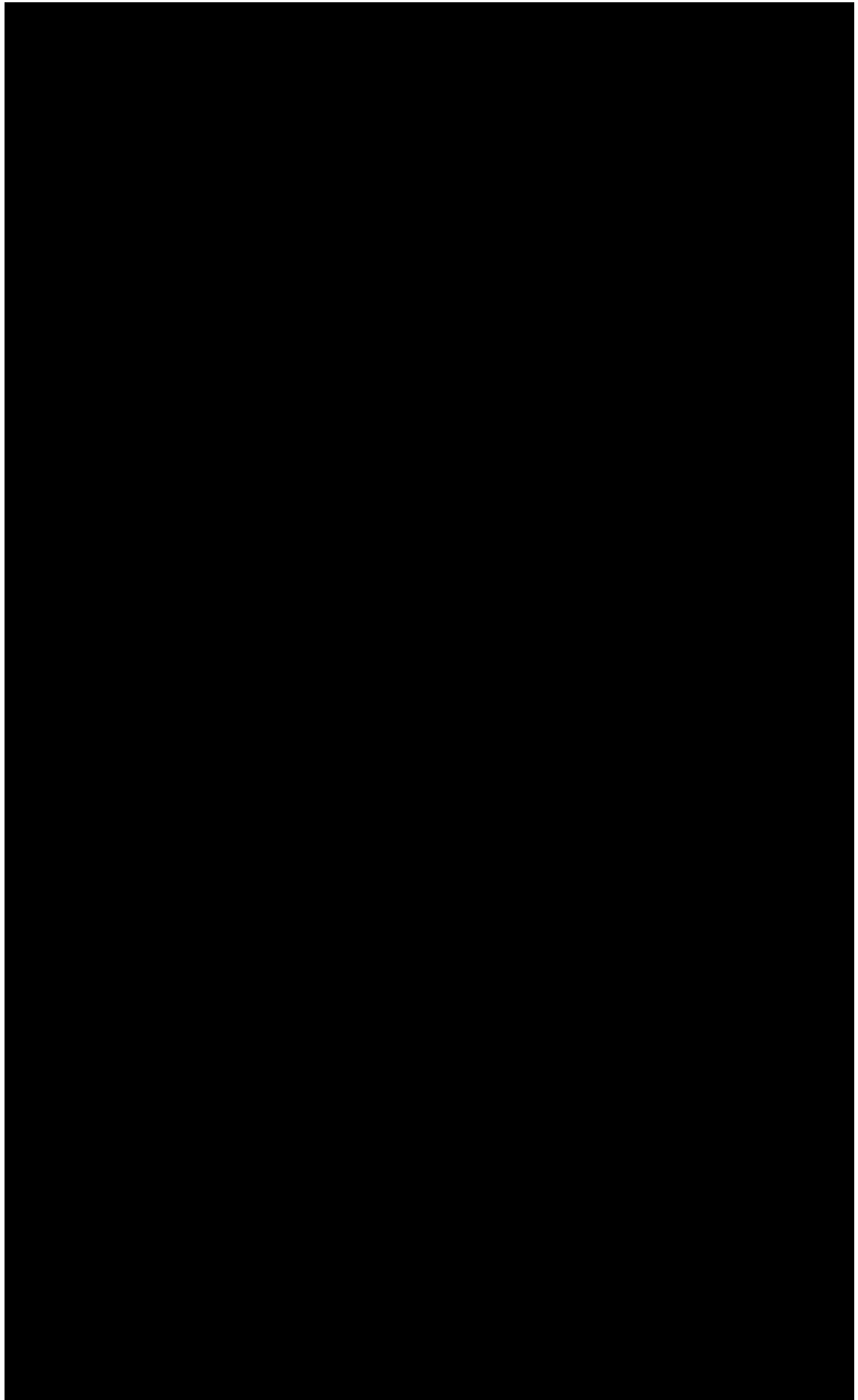
21

22

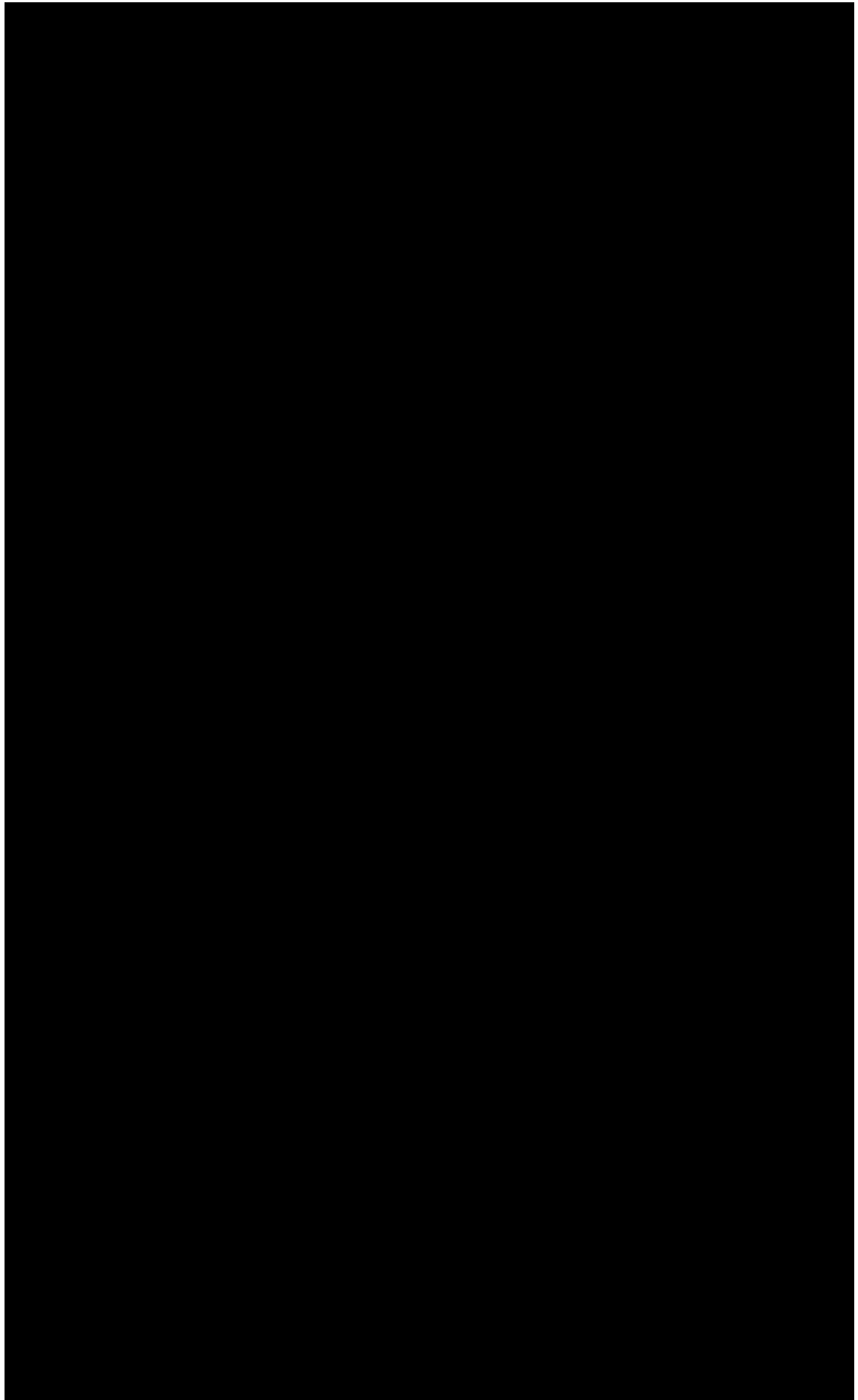
23

24

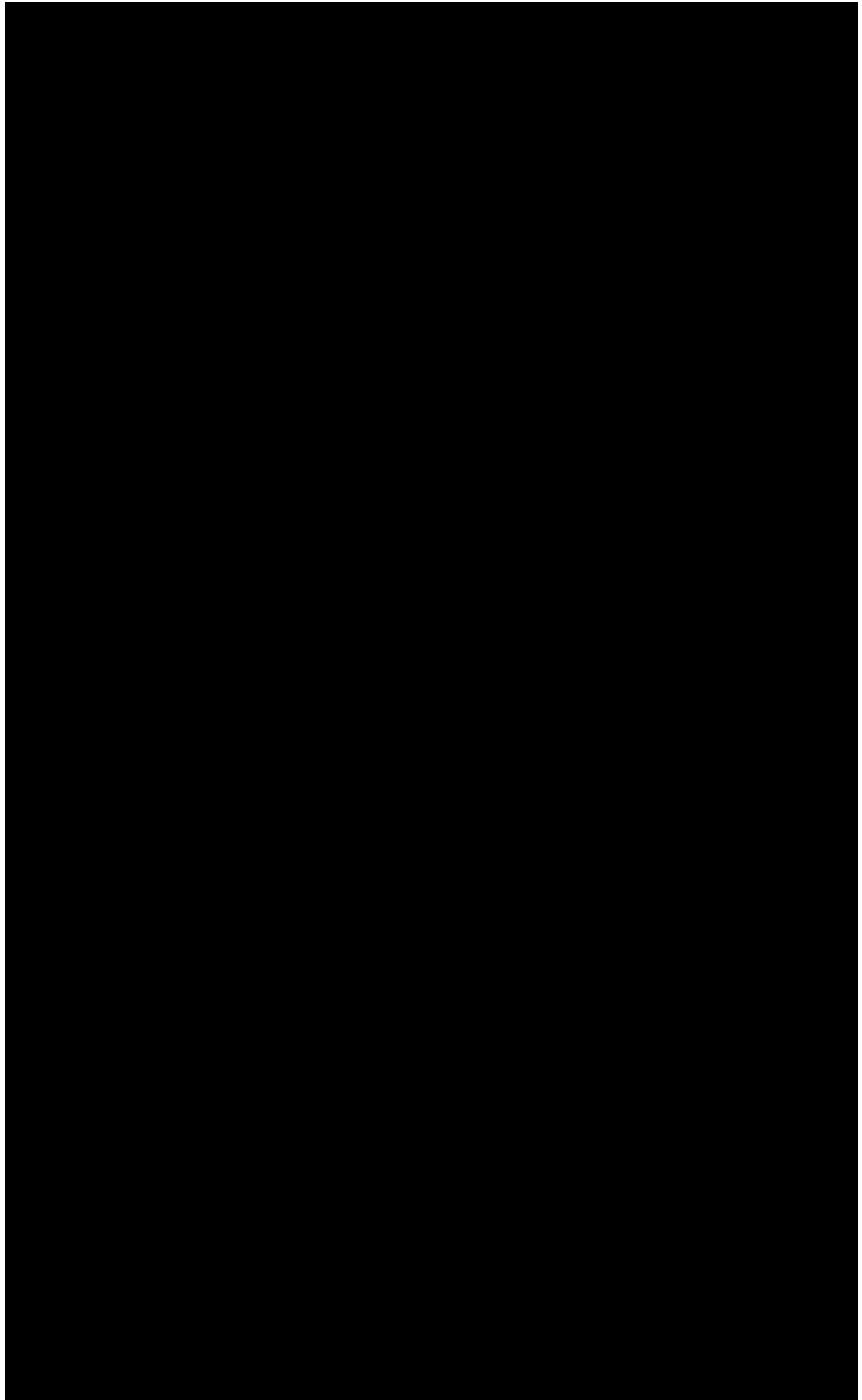
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



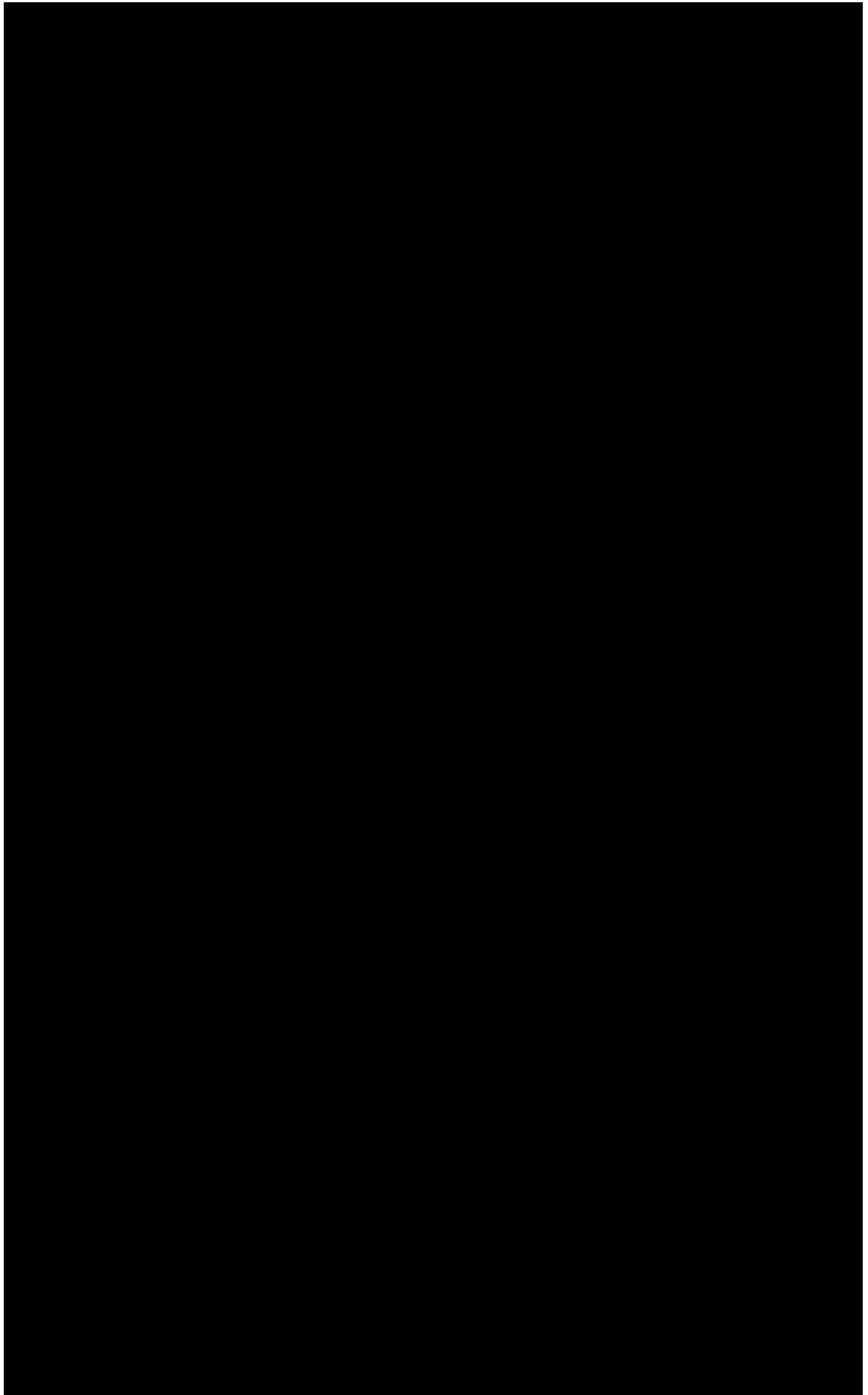
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



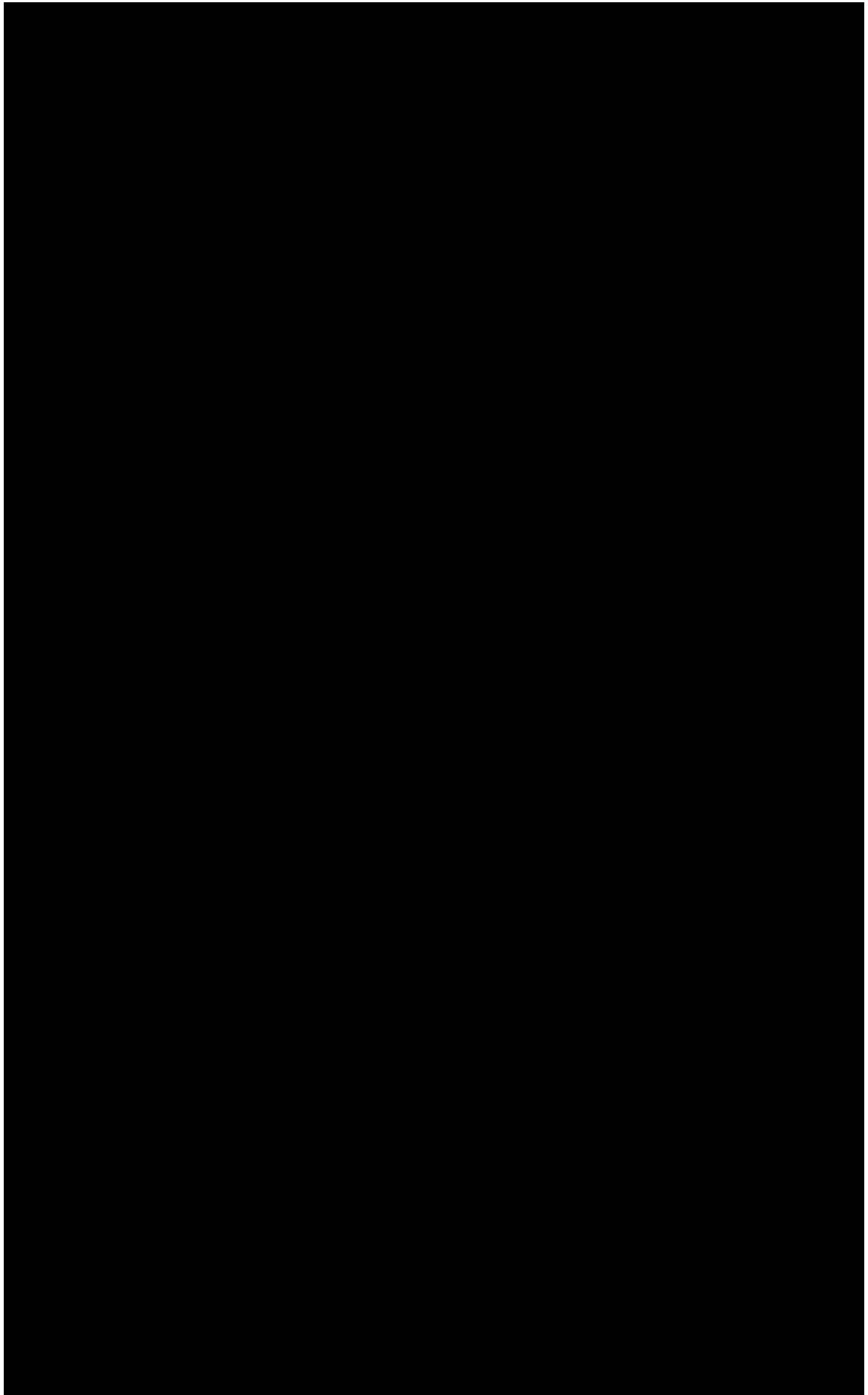
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



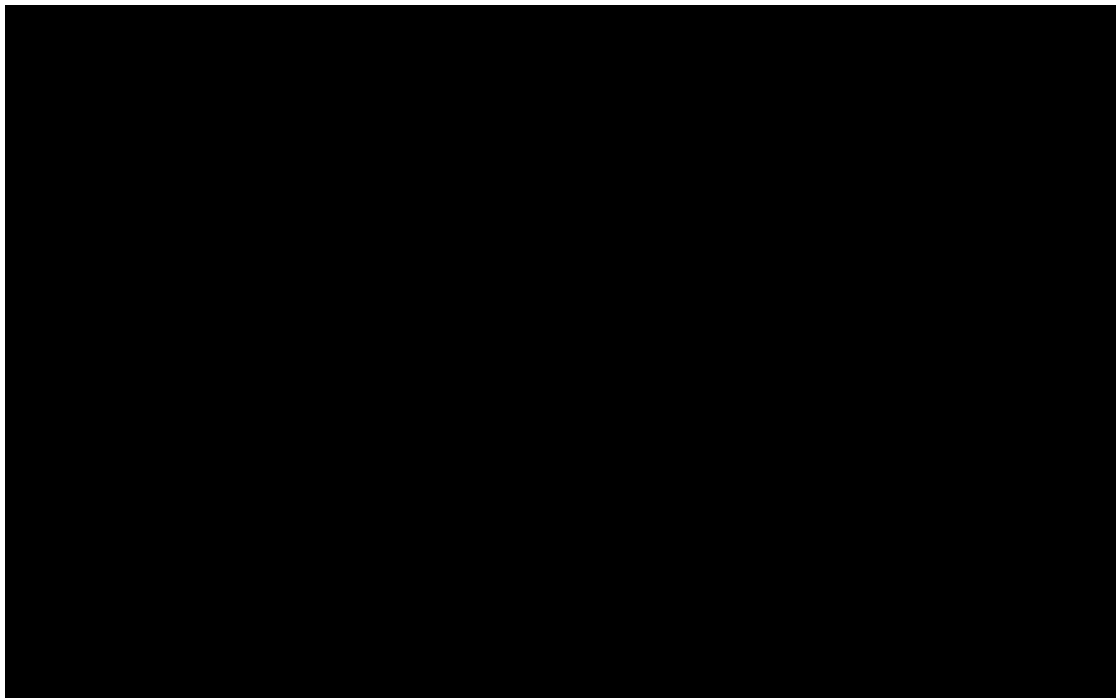
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9



10 (Exhibit No. 142 was premarked for
11 identification.)

12 BY MR. KENNEDY:

13 Q All right. We'll look at VIPER.

14 Let me show you Exhibit 142. Is that
15 your name up on the front page?

16 A Yes.

17 Q Henry Mortelliti, correct?

18 A Yes.

19 Q Go to page 6 of 9, if you would, please.
20 This is kind of a progress report, is it not?

21 MR. BUSH: Objection.

22 THE WITNESS: It's a year-end.

23 BY MR. KENNEDY:

24 Q For 2012?

1 A Yes.

2 Q Looking at page 6 of 9, go over on the
3 right-hand column. A couple of paragraphs down,
4 does it say "April 2"? Do you see that, April 2?

5 A Okay.

6 Q "April 2: Meet deadline for
7 understanding how to leverage WMS reporting,
8 MicroStrategy and VIPER."

9 MR. BUSH: Objection. I think you
10 misspoke, Eric. It's met, not meet. Small point,
11 but you didn't read it quite right.

12 BY MR. KENNEDY:

13 Q Next sentence: "Begin immediate use of
14 queries to analyze control drug and PSE order
15 data." Do you see that?

16 A I do.

17 Q Do you have any evidence -- any memory,
18 any evidence that MicroStrategy existed and was
19 being utilized prior to 2012?

20 A I -- I don't know. I don't know if the
21 field was using it. This -- this information
22 again was taken -- what we received on the IRR and
23 actually reviewing other -- other data, and a lot
24 of this information I got from the DEA Agent Donna

1 Walker on what we should be looking for.

2 Q I'm talking about 2009 right now up to
3 October of '10. That's what I'm talking about
4 with respect to the use of MicroStrategy.

5 Do you have any memory or any evidence
6 that you can point us to that would -- that would
7 indicate that MicroStrategy was in existence and
8 being utilized in 2009 up to October of '10?

9 A I just don't recall using it.

10 Q All right. Now, you indicated that
11 these -- these folks in 2009 and '10, the field
12 VIPER analysts and the regional LP manager, that
13 they were utilizing VIPER to evaluate potentially
14 suspicious orders that you would refer to them,
15 true?

16 A Yes.

17 Q Let's -- let's look at VIPER.

18 MR. BUSH: Is now a good time for a
19 break? We've been going --

20 MR. KENNEDY: Sure.

21 MR. BUSH: -- for an hour and a half.

22 MR. KENNEDY: Yeah.

23 THE VIDEOGRAPHER: The time is 9:27 a.m.
24 We're going off the record.

1 (Recess.)

2 THE VIDEOGRAPHER: The time is 9:42 a.m.

3 We're back on the record.

4 BY MR. KENNEDY:

5 Q Now, Mr. Mortelliti, you -- you
6 indicated that when you would refer a suspicious
7 or potentially suspicious order of hydrocodone to
8 the VIPER analysts and the LP prevention manager,
9 that they would have available to them what was
10 known as the VIPER report, true?

11 A Yes.

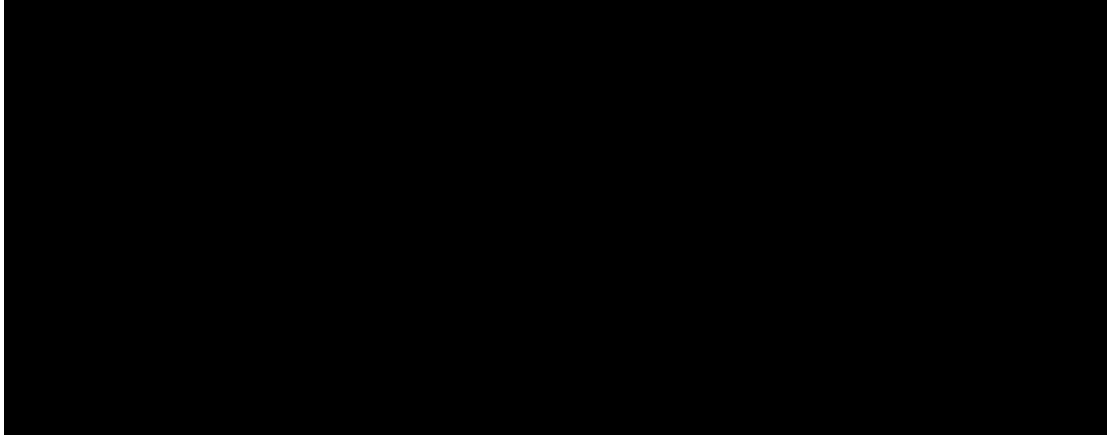
12 Q And that's -- they would have had that
13 available to them in '09 and 2010; is that your
14 testimony?

15 A Yes.

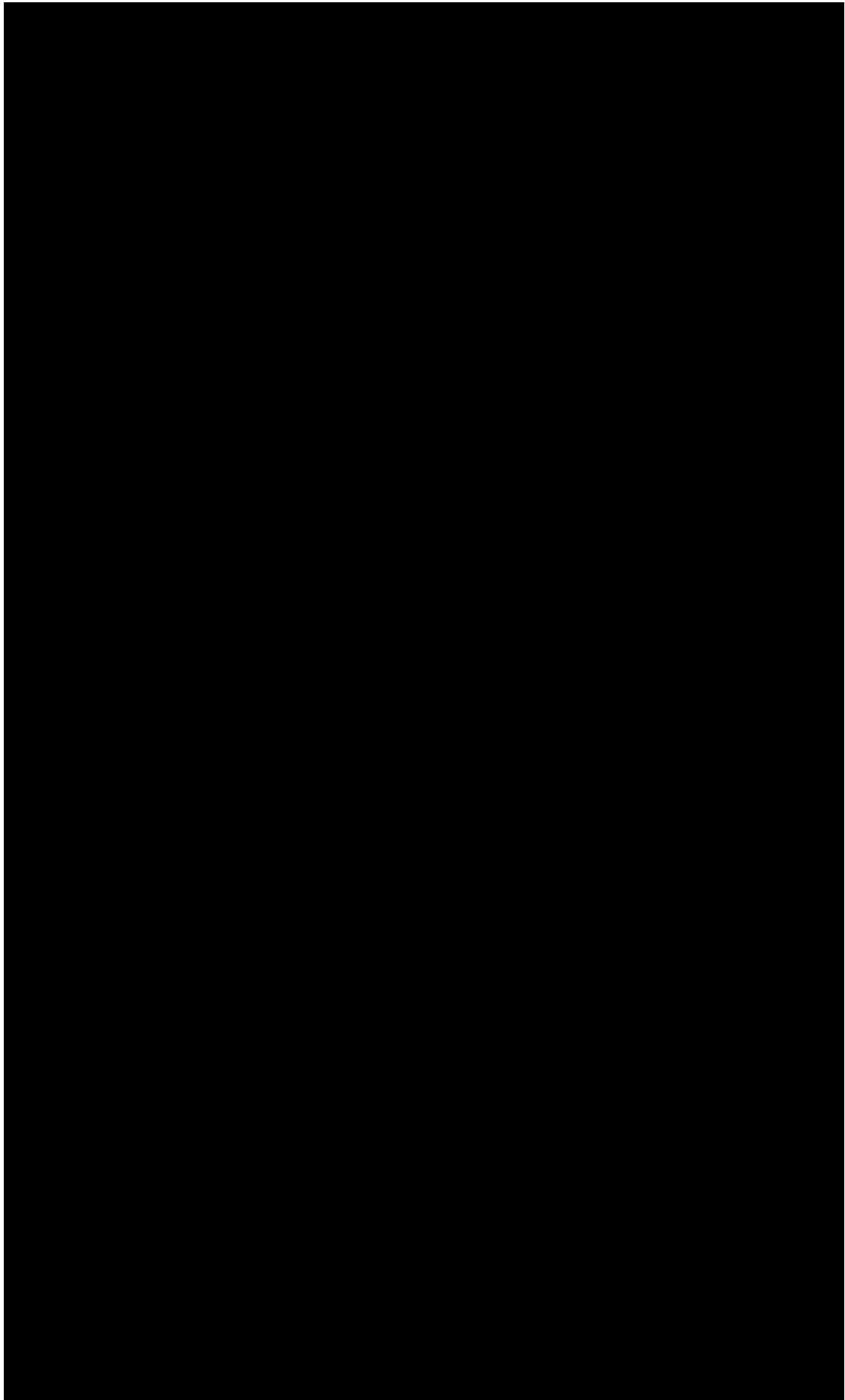
16 (Exhibit No. 132 was premarked for
17 identification.)

18 BY MR. KENNEDY:

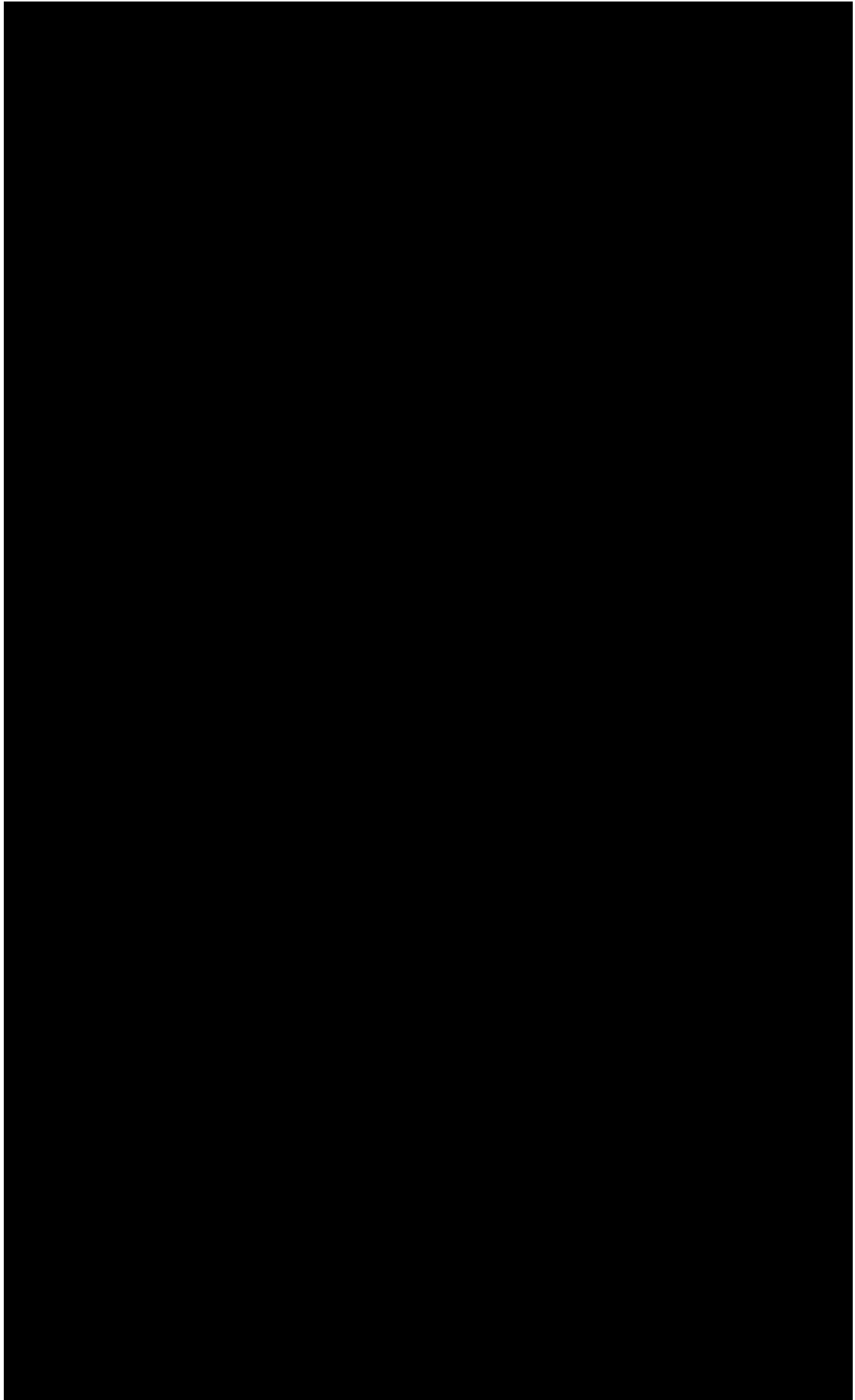
19
20
21
22
23
24



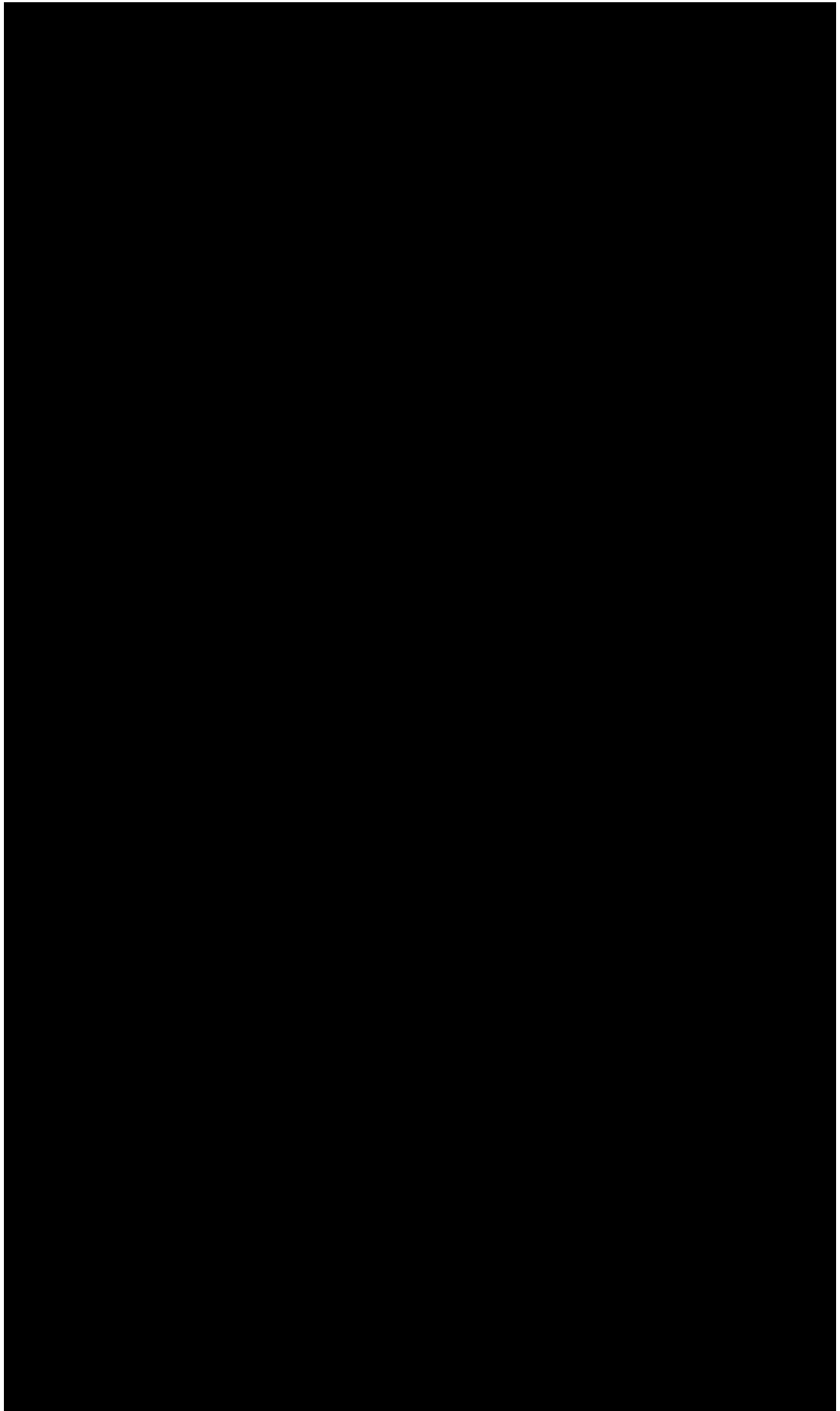
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



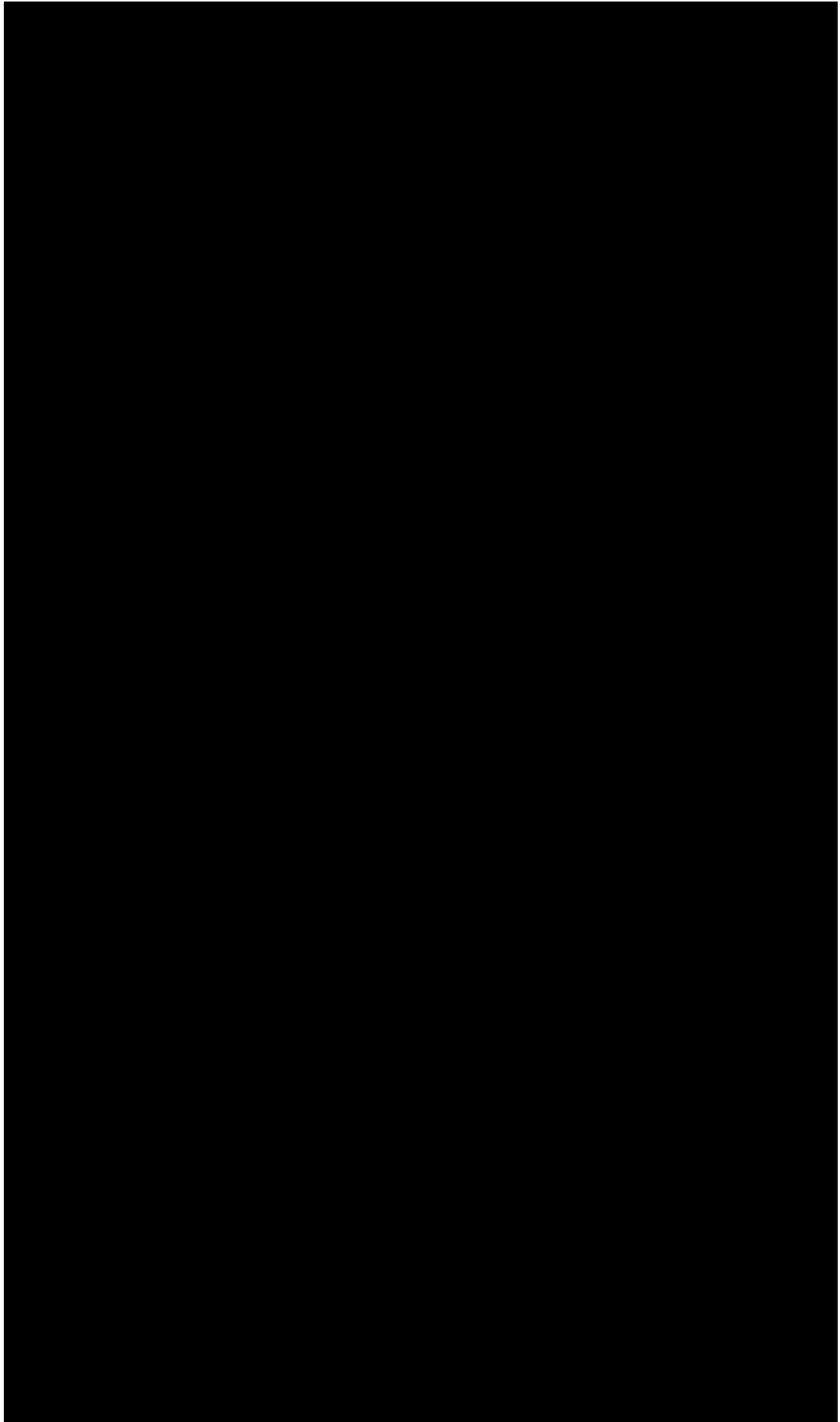
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



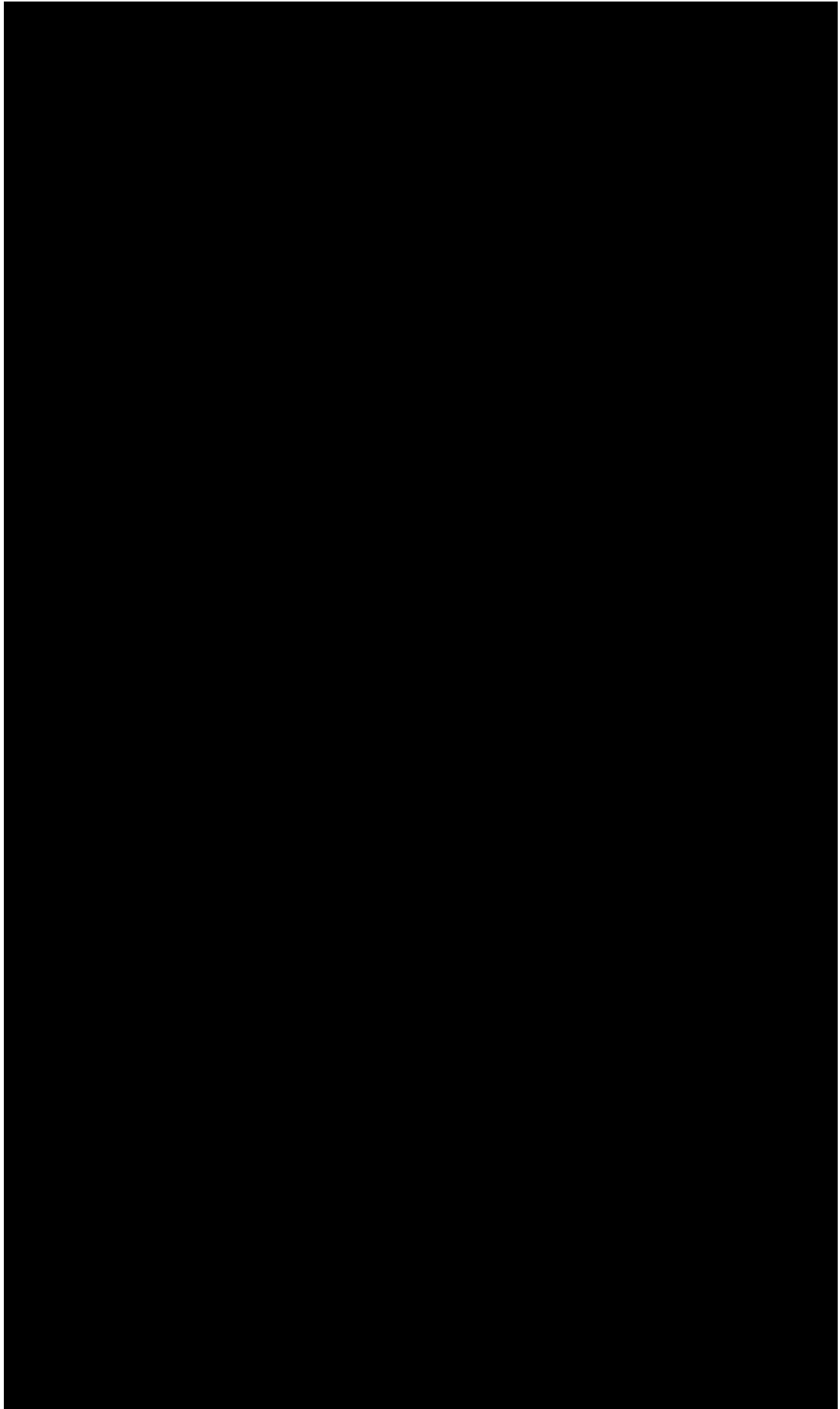
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



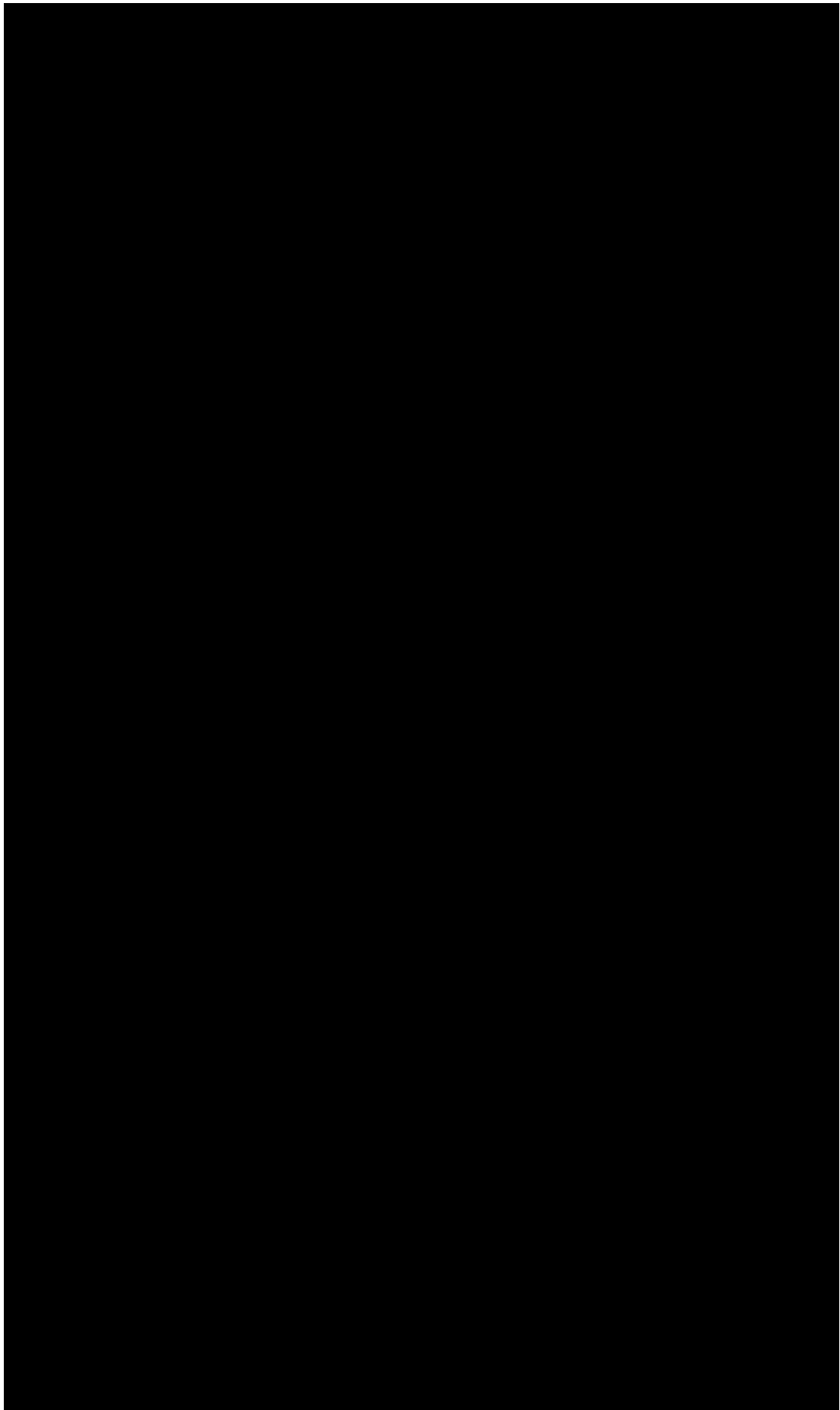
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



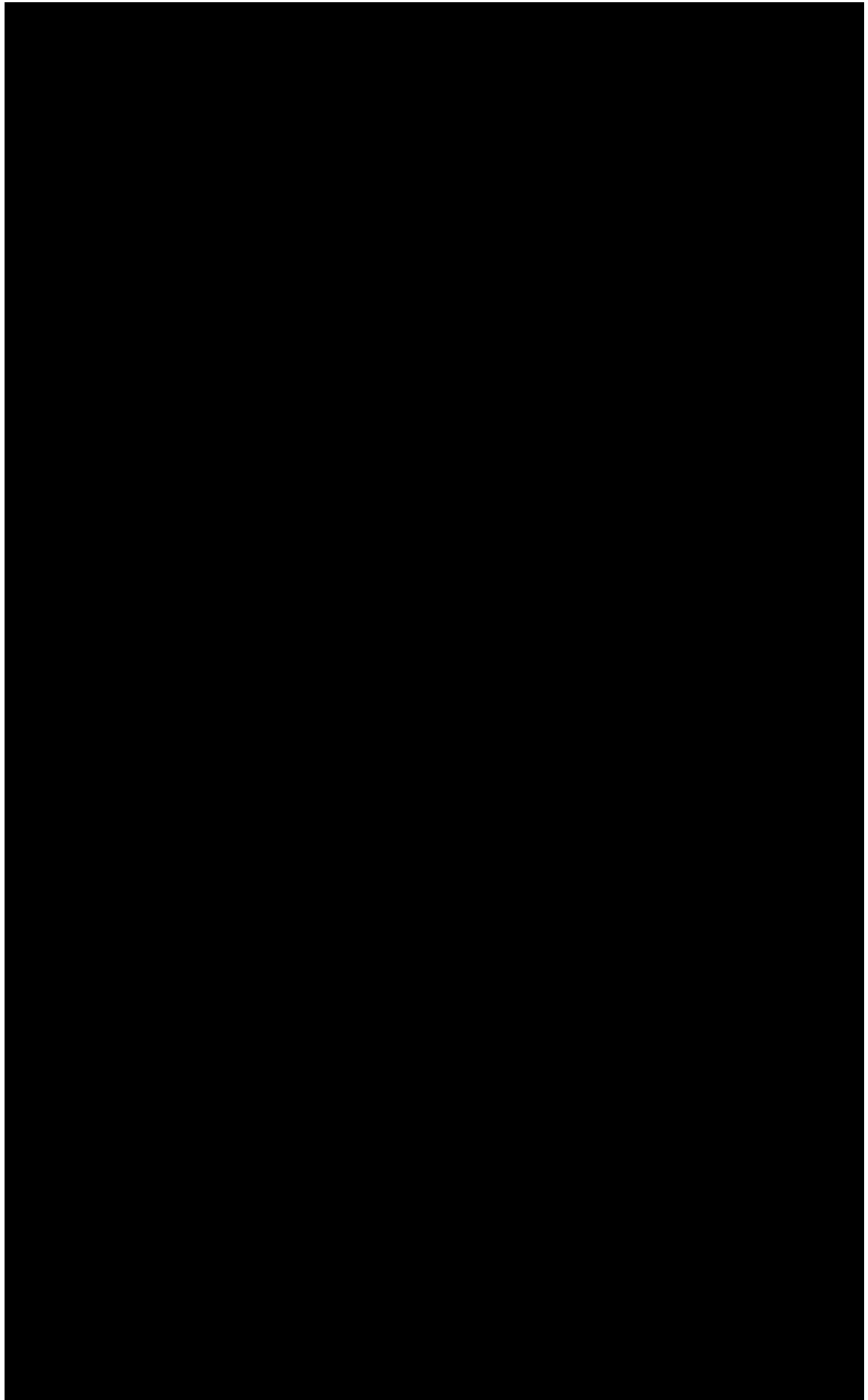
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



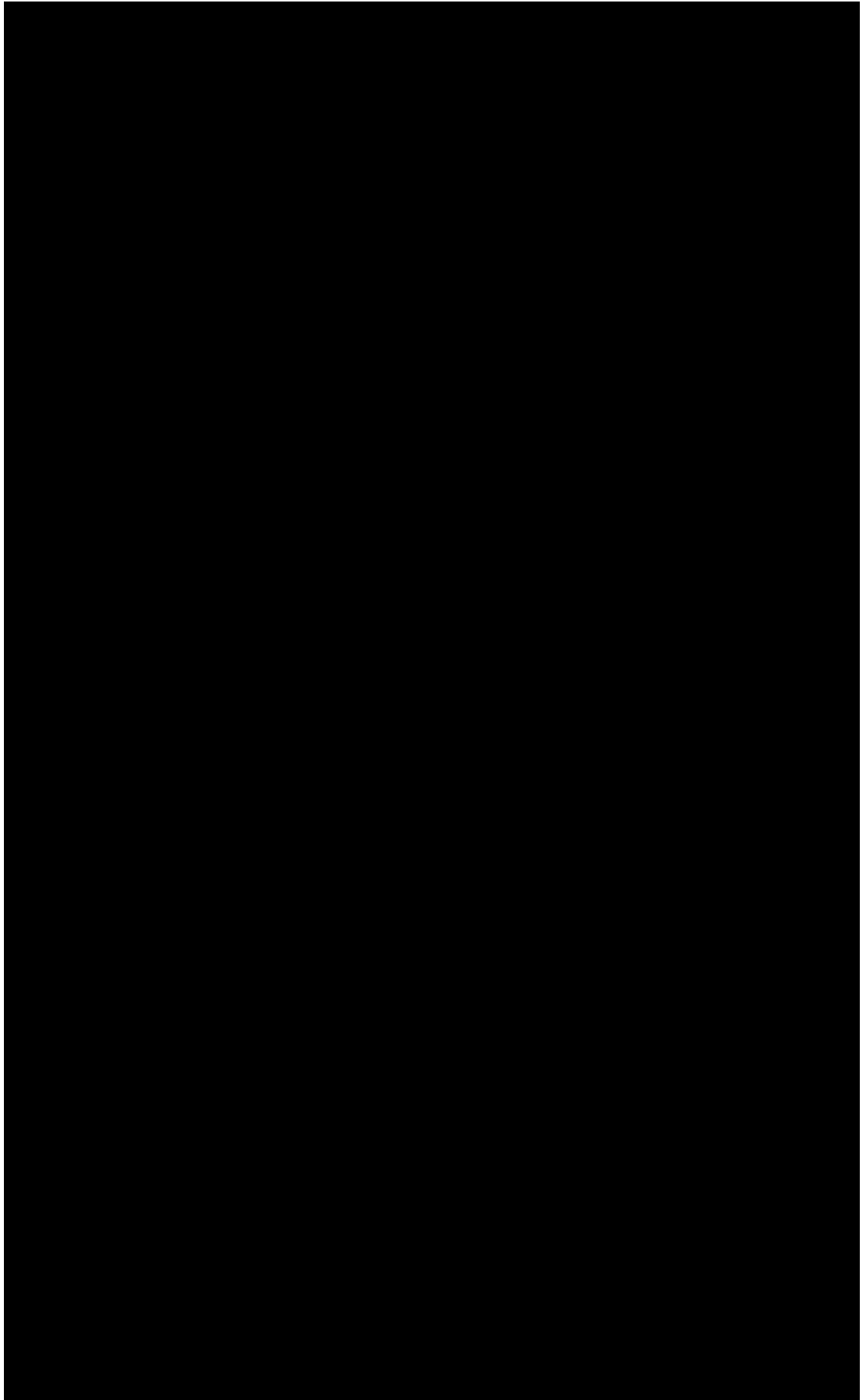
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



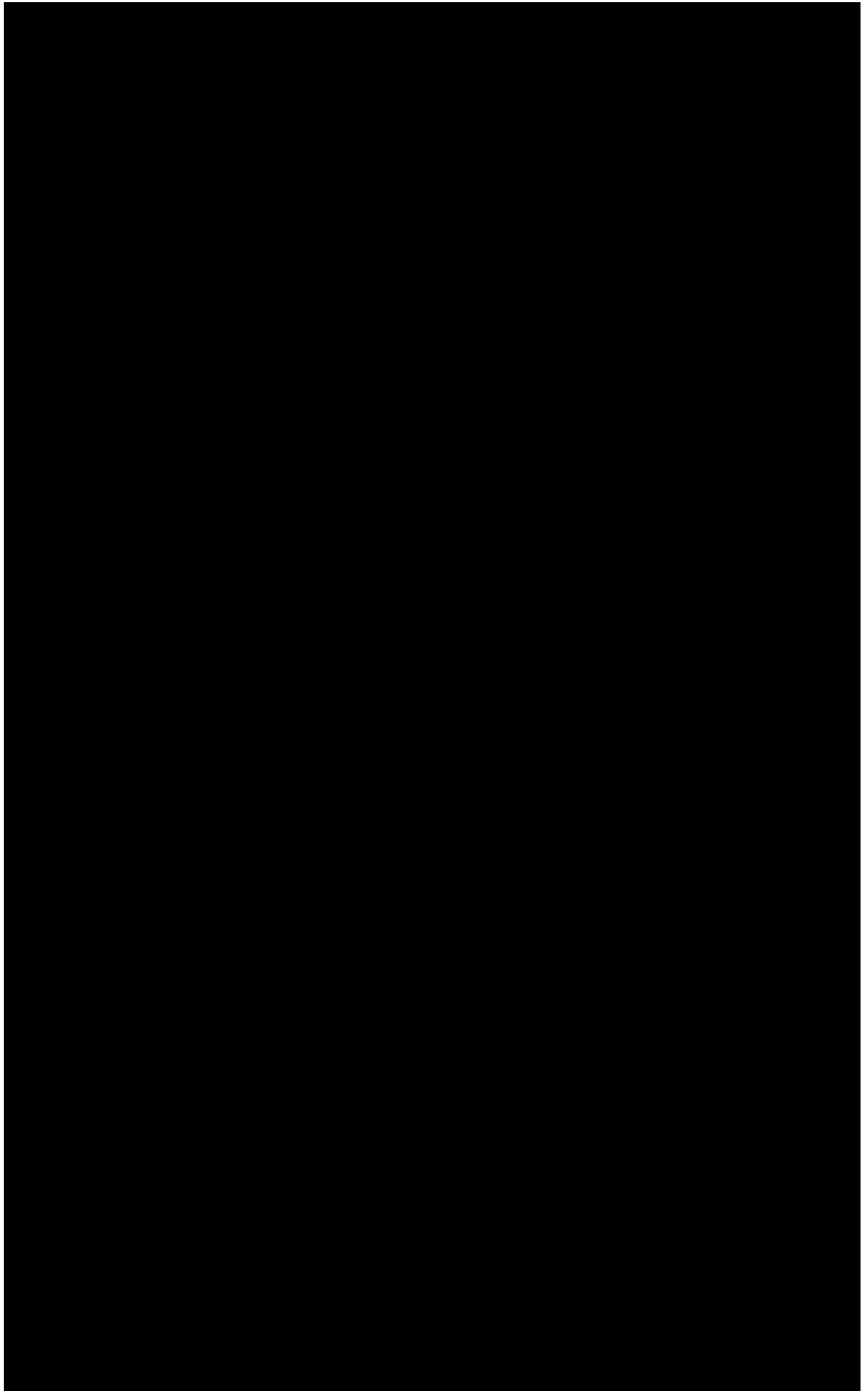
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



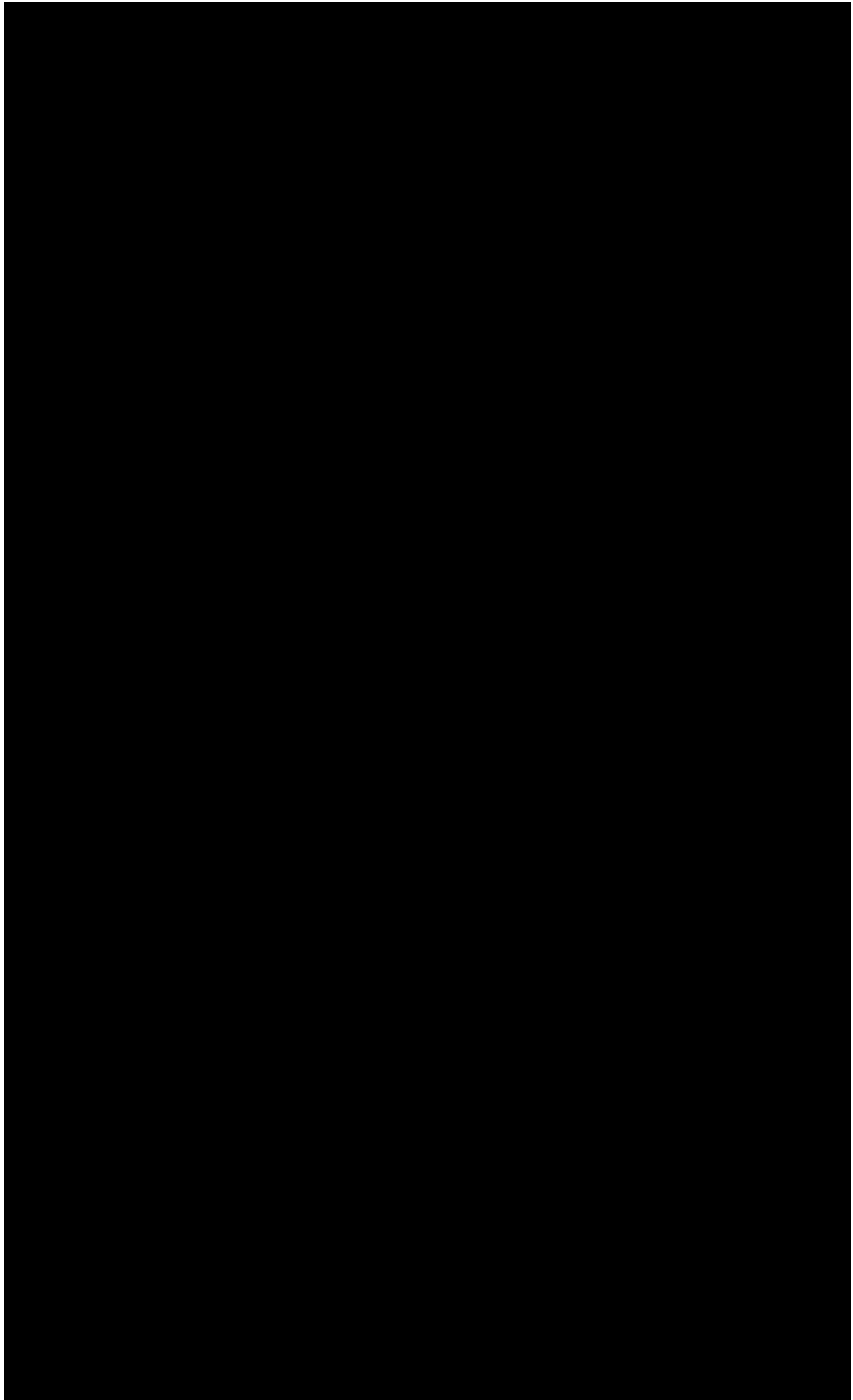
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



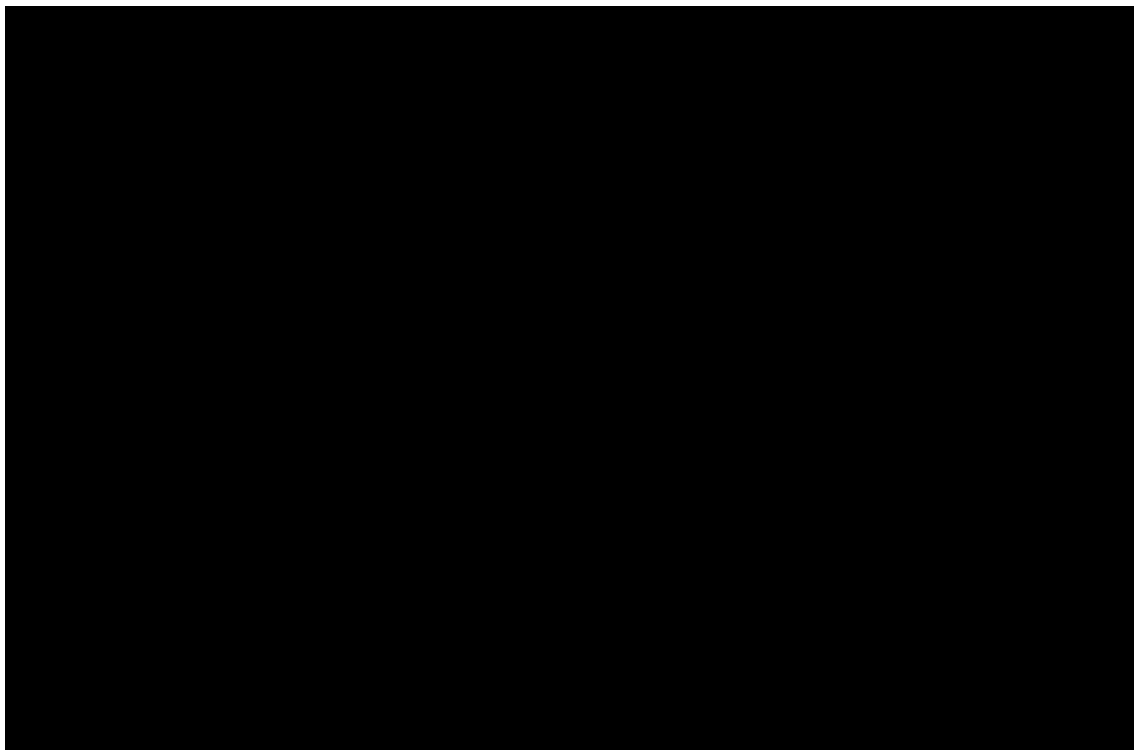
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10



11 MR. BUSH: Objection.

12 BY MR. KENNEDY:

13 Q The LP analysts -- excuse me, the VIPER
14 analysts and the LP prevention manager who you
15 would refer investigation to, who did they work
16 for? Who was their employer, what company?

17 A The VIPER analysts in the field reported
18 to, it would be, the loss prevention area
19 directors.

20 Q And who would they be?

21 A In 2009?

22 Q Yes.

23 A Chris Knight, Gary Loreck, David Henry,
24 Jim Berry, Tim Curry, and I believe Paul Lehman

1 were the area directors. There could be a couple
2 that I missed by a couple of years. We had some
3 turnover.

4 Q What policies -- written policies and
5 procedures were in place in 2009 and 2010 telling
6 the -- the VIPER analysts and the LP prevention
7 manager what they were to do with respect to
8 investigating suspicious orders?

9 A I don't know.

10 Q Who trained the VIPER analysts and the
11 LP prevention manager with respect to their
12 responsibilities to investigate suspicious orders?

13 A They -- they had their own field
14 training. I don't know who the trainers were.
15 But -- no, I don't know.

16 Q What audit policy was in place to -- to
17 audit and monitor what the VIPER analysts and the
18 LP prevention manager were doing with respect to
19 their investigation of suspicious orders?

20 A I don't know what their -- what their
21 process looked like.

22 Q And in '09 and 2010, what -- what audit
23 procedure was in place to -- to audit what you
24 were doing with respect to the IRR reports?

1 A I -- I don't recall if -- I don't recall
2 an audit.

3 Q Do you remember an audit ever being done
4 to monitor your performance with respect to what
5 you were doing with the IRRs?

6 A We had meetings with outside counsel,
7 Terry Woodworth.

8 Q In 2009?

9 A I -- I don't remember the dates.

10 Q I'm talking about a formal audit of what
11 you were doing with respect to IRRs, was that ever
12 done in 2009 and '10?

13 A I don't recall the dates. I did have a
14 sit-down with our corporate attorneys at one
15 point, and again, I don't recall the dates. I
16 know Terry Woodworth was our -- our -- gosh, I
17 don't know, DEA consultant maybe, pharmacy
18 consultant. I'm not sure. But they reviewed my
19 work. But as for something written down, I -- I
20 don't recall seeing anything like that.

21 Q The VIPER analysts and the LP prevention
22 manager, would they be required to create records
23 of any investigation that they performed in
24 relation to hydrocodones?

1 A I don't know.

2 Q You don't know?

3 A No.

4 Q Can we agree that any investigation or
5 review that they did in 2009, '10, should be part
6 of an IRR recap report?

7 MR. BUSH: Objection.

8 THE WITNESS: When I was doing the
9 reports, I would write down on the IRR itself
10 time, date, who I spoke to, when they called me
11 back, and when the order was released, who I froze
12 the order with.

13 MR. KENNEDY: I'm going to move to
14 strike.

15 BY MR. KENNEDY:

16 Q Listen to my question, please.

17 I asked you, and I'll ask you again, can
18 we agree that any review or investigation that a
19 VIPER analyst or an LP prevention manager did with
20 respect to a potentially suspicious hydrocodone
21 order would be recorded in the IRR recap report?

22 MR. BUSH: Objection. And his answer
23 before was perfectly responsive to that question.

24 THE WITNESS: Yeah, my answer is the

1 same. I wrote down the information, and they got
2 back to me on the report.

3 BY MR. KENNEDY:

4 Q Oh, so you would record not just what
5 you did, you would record what they told you they
6 did?

7 A Not what they did, no, I didn't record
8 that. I record when they told me it was okay to
9 release the order.

10 Q So you did not record anywhere what the
11 VIPER analyst or LP prevention manager did to
12 review an order, correct?

13 A Not -- not all the steps. No.

14 Q And so my question again for the third
15 time, and listen very carefully, what they did do,
16 whatever review or investigation the VIPER analyst
17 did or the LP prevention manager did with respect
18 to a hydrocodone order should be recorded in the
19 IRR recap report.

20 MR. BUSH: Objection.

21 BY MR. KENNEDY:

22 Q True?

23 MR. BUSH: Objection.

24 THE WITNESS: I don't know if it should

1 be recorded there. They may have it on file for
2 themselves. They didn't report to me.

3 BY MR. KENNEDY:

4 Q All right. But it should be recorded
5 either by them in their own recordkeeping,
6 correct?

7 A I don't know.

8 MR. BUSH: Objection.

9 BY MR. KENNEDY:

10 Q Or it should be on the IRR recap report,
11 correct?

12 MR. BUSH: Objection.

13 THE WITNESS: I only wrote what they
14 told me: To release -- to release the orders.

15 BY MR. KENNEDY:

16 Q We talked about VIPER. Specifically,
17 can you name for us any other reports other than
18 VIPER that would have been utilized in 2009 and
19 '10 by the VIPER analyst or the LP prevention
20 manager in reviewing a hydrocodone suspicious
21 order?

22 A I don't remember the reports.

23 Q And with respect to hydrocodone, would I
24 be correct that you reviewed no reports, you just

1 simply referred it to the LP prevention manager or
2 the VIPER analyst?

3 MR. BUSH: Objection.

4 THE WITNESS: Aside from the store order
5 history of hydrocodone, which I had historical
6 data on, the store reports themselves I didn't
7 have access to. So...

8 BY MR. KENNEDY:

9 Q And the historical data, you're talking
10 about what was in the IRR?

11 A Yes.

12 Q So in your position then from '09 to
13 '10, with respect to hydrocodones, you did nothing
14 more than take a flagged hydrocodone order and
15 refer it elsewhere to be reviewed, correct?

16 MR. BUSH: Objection.

17 BY MR. KENNEDY:

18 Q That is all you did with hydrocodones
19 that were flagging as potentially suspicious?

20 MR. BUSH: Objection. Misstates the
21 record.

22 THE WITNESS: If there were also other
23 drugs that were flagged for that store, especially
24 if it was a cocktail, I would pass on that

1 information as well.

2 BY MR. KENNEDY:

3 Q But you did no review -- let's be just
4 very clear. You did no review and investigation
5 yourself on flagged orders of hydrocodone,
6 correct?

7 A That -- that was out of my area. No.
8 It was the field's responsibility.

9 Q So you didn't do an investigation,
10 correct?

11 A For all the stores in the country?

12 Q Correct, for hydrocodones.

13 A No, the field did their -- their stores,
14 their own stores.

15 Q You know of no policies and procedures
16 in place that in any way guided you as to your
17 responsibilities in '09 and '10, correct?

18 MR. BUSH: Objection.

19 THE WITNESS: I don't recall any
20 specific policy and procedure. I read tons of
21 documents year end and year out.

22 BY MR. KENNEDY:

23 Q As you sit here today, you can't
24 identify any single policy and procedure that

1 existed in '09 and '10 to guide you in your job,
2 true?

3 MR. BUSH: Objection.

4 BY MR. KENNEDY:

5 Q Is that true?

6 A I don't recall any procedure.

7 Q You don't recall a single formal audit
8 of you with respect to your duties and
9 responsibilities and how you were carrying out
10 your job in '09 and '10; is that correct?

11 A Formal audits with our corporate
12 attorney and Terry Woodworth, they reviewed my --
13 my information. I didn't get any recommended
14 changes or anything.

15 Q And can you tell me, sir, how many
16 suspicious orders of controlled substances were
17 reported to the DEA in '09 and '10 while you were
18 monitoring the IRR? How many?

19 A I don't recall. Frank Devlin and Pam
20 Hinkle were the only two that were permitted to
21 speak with DEA.

22 Q But you certainly would be aware of it,
23 right?

24 A I -- I did my -- my job. I did follow

1 the procedure, the process. If something was
2 investigated, if we held an audit -- an order, I
3 reported that up to them, they would follow up on
4 their end, and then I moved on to the next phase.
5 Everyone had their -- their position with the --
6 with the SOM project.

7 Q Did you review suspicious orders in '09
8 and '10, and -- and take a look at the cash
9 percentages of purchases at particular pharmacies?
10 Did you do that?

11 MR. BUSH: Objection.

12 THE WITNESS: '09 and '10? I don't
13 recall.

14 BY MR. KENNEDY:

15 Q Who is Cricket Osment?

16 A She was a VIPER analyst at the time.

17 Q She's one of the people that you would
18 refer hydrocodone orders to to investigate?

19 A She would have been, yes.

20 Q What would happen when you were sick or
21 went on vacation in '09 and 2010, who would take
22 your job over?

23 A Well, I had perfect attendance, but if I
24 had vacation, I would have Pam Hinkle take over

1 the process.

2 Q Let's move into the fall -- the fall of
3 2010. There were -- things changed in the fall of
4 2010, did they not?

5 A Yeah -- yes.

6 Q The fall of -- of 2010, the first
7 written suspicious order monitoring policy came
8 into place, did it not?

9 MR. BUSH: Objection.

10 THE WITNESS: I don't recall dates.
11 There were several documents.

12 BY MR. KENNEDY:

13 Q One second.

14 You don't recall that in October of --
15 of 2010, you stopped being the single person in
16 the country responsible for looking at all IRRs?

17 A There was a --

18 MR. BUSH: Objection.

19 THE WITNESS: -- a brief time where we
20 were looking to remove it from my plate.

21 BY MR. KENNEDY:

22 Q Does that sound about right, October of
23 2010, it got removed from your plate?

24 MR. BUSH: Objection.

1 THE WITNESS: I don't recall the exact
2 time.

3 BY MR. KENNEDY:

4 Q Well, it went from your plate to the
5 plate of each of the 11 DCs, correct?

6 MR. BUSH: Objection.

7 THE WITNESS: That was the goal. I -- I
8 don't recall -- I don't recall that actually
9 happening, though.

10 BY MR. KENNEDY:

11 Q All right. Let me ask you this: Didn't
12 you represent to the DEA in August of -- of 2010
13 that that's exactly what was going to happen
14 within the next 30 days? Wasn't that the express
15 representation to the DEA?

16 MR. BUSH: Objection.

17 THE WITNESS: I did present to DEA Agent
18 Donna Walker -- whew -- I don't recall the slides
19 off the top of my head, but I talked -- if -- if
20 I'm not mistaken, I believe there was -- there was
21 what we were doing and -- and what the plan may
22 have been or what we were doing because of -- or
23 what we planned on doing, but we didn't. I don't
24 remember how that went down. But I can tell you

1 if Donna Walker -- Walker was in my building, she
2 was going to -- she was going to know the truth.
3 So...

4 BY MR. KENNEDY:

5 Q Are you saying Donna Walker?

6 A Donna Walker, yes.

7 Q Okay. All right.

8 Why didn't it go out to the distribution
9 centers in October of 2010? That was your -- your
10 written policy and procedure that was to be
11 implemented in October of 2010, to take your job
12 and send it to the distribution centers so that
13 they each could look at their own IRR. Why did
14 that not happen?

15 MR. BUSH: Objection.

16 THE WITNESS: The IRR you provided in
17 November is showing that that's the time period
18 that we had lost historical data. So I was the
19 only one that had that historical data in previous
20 IRRs. I can't remember all the details, but I
21 couldn't turn over the program at the time because
22 no one else would be able to do it correctly.

23 (Exhibit No. 9 was premarked for
24 identification.)

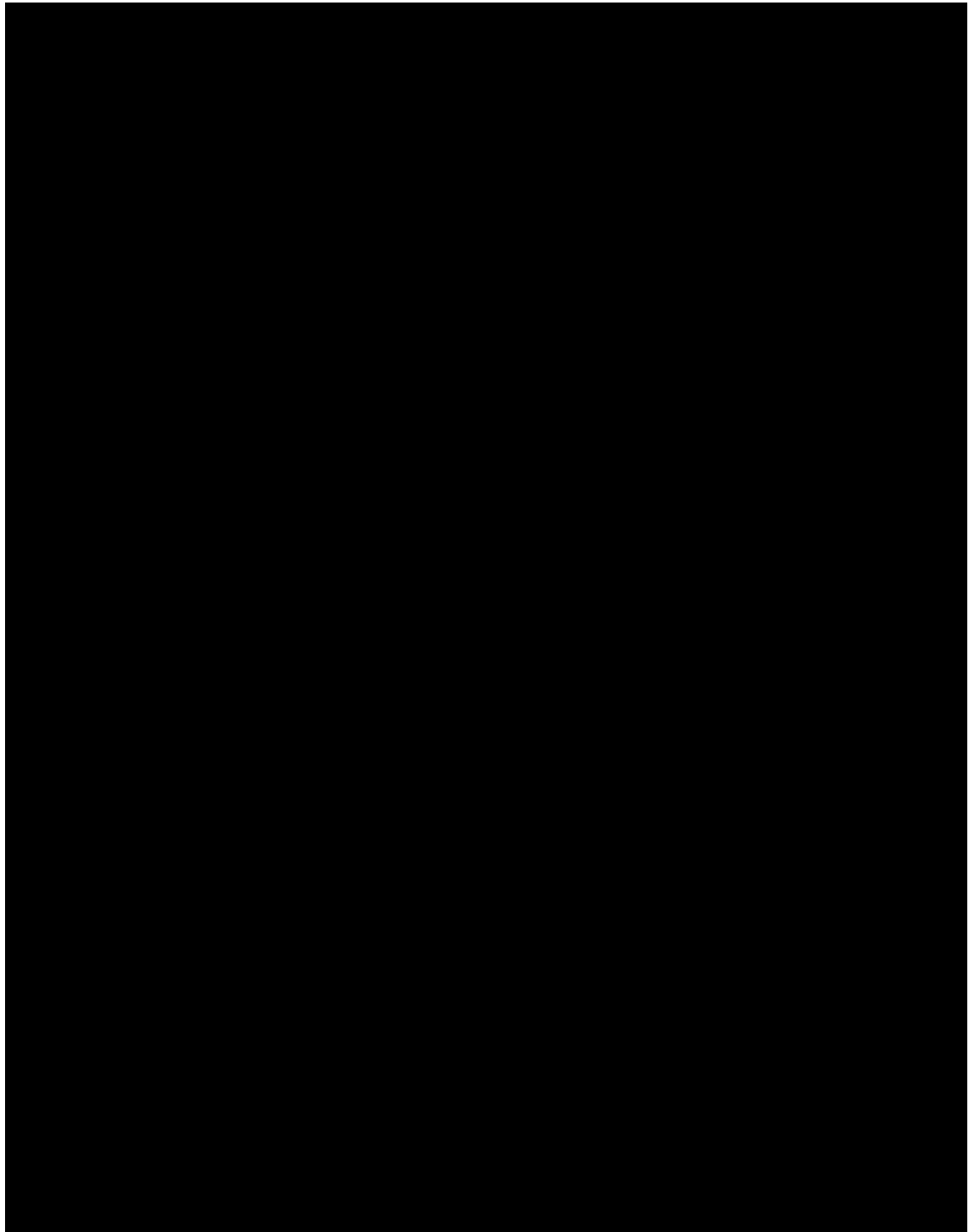
1 MR. KENNEDY: All right.

2 Exhibit 9.

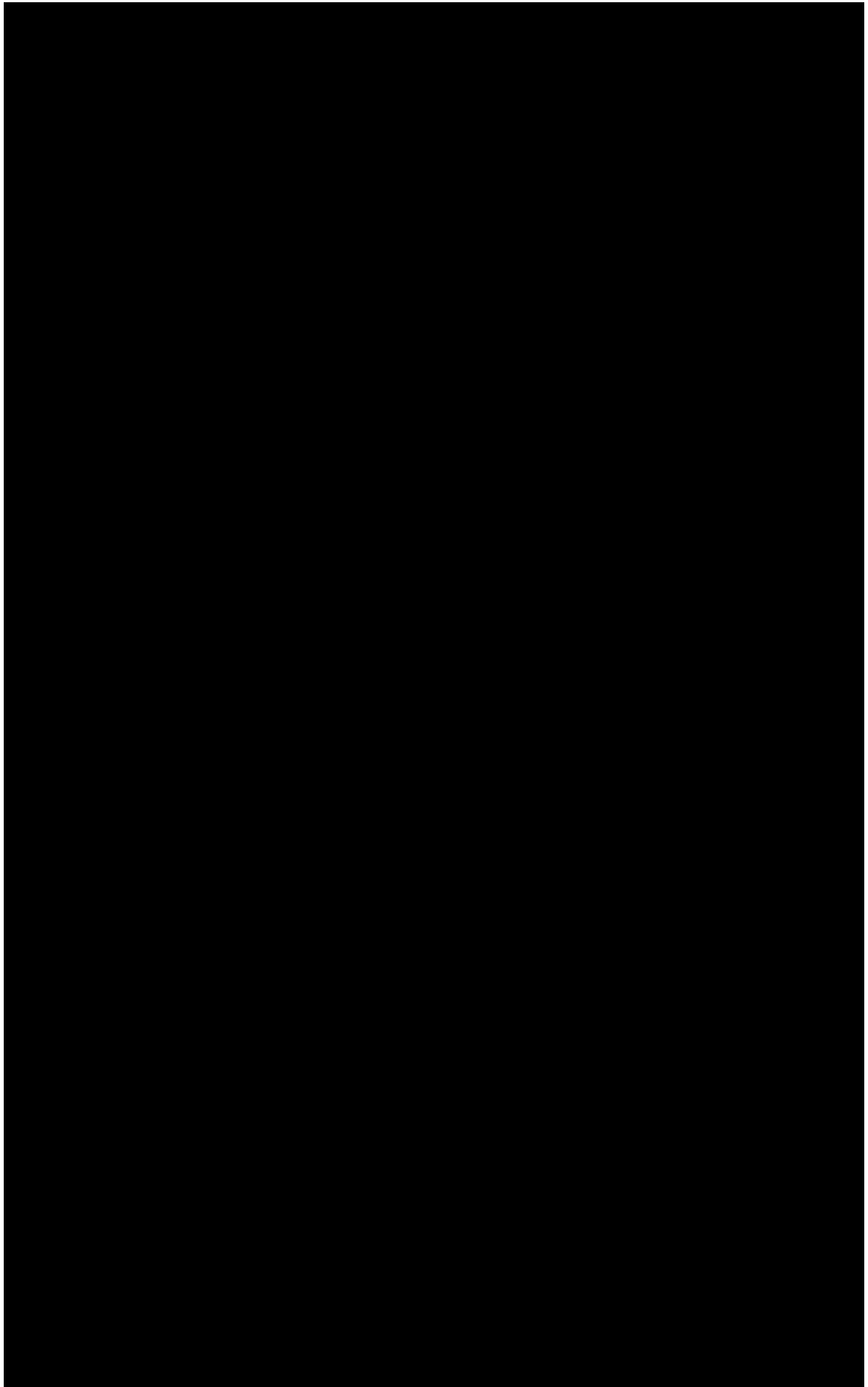
3 (Exhibit No. 28 was premarked for
4 identification.)

5 BY MR. KENNEDY:

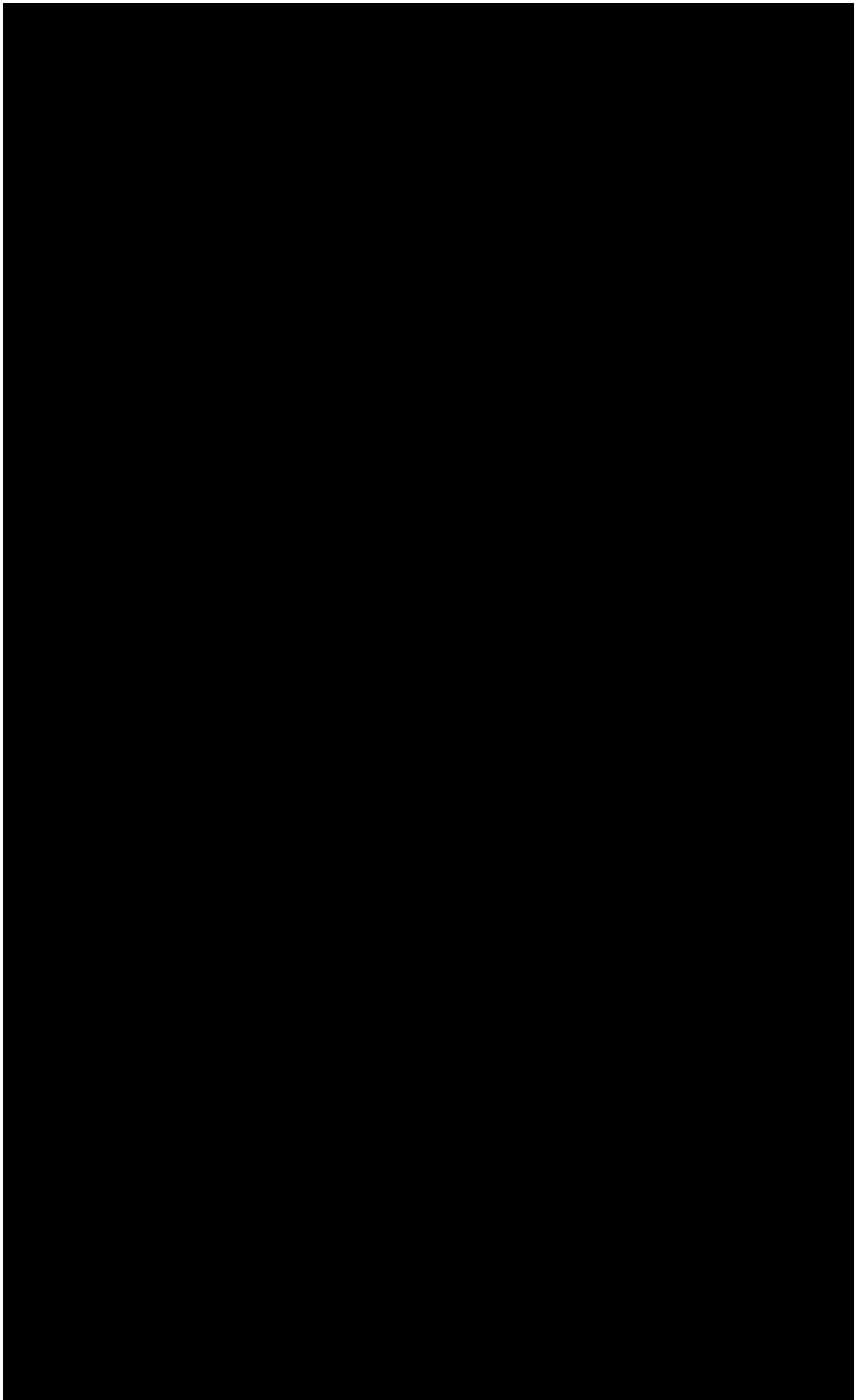
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



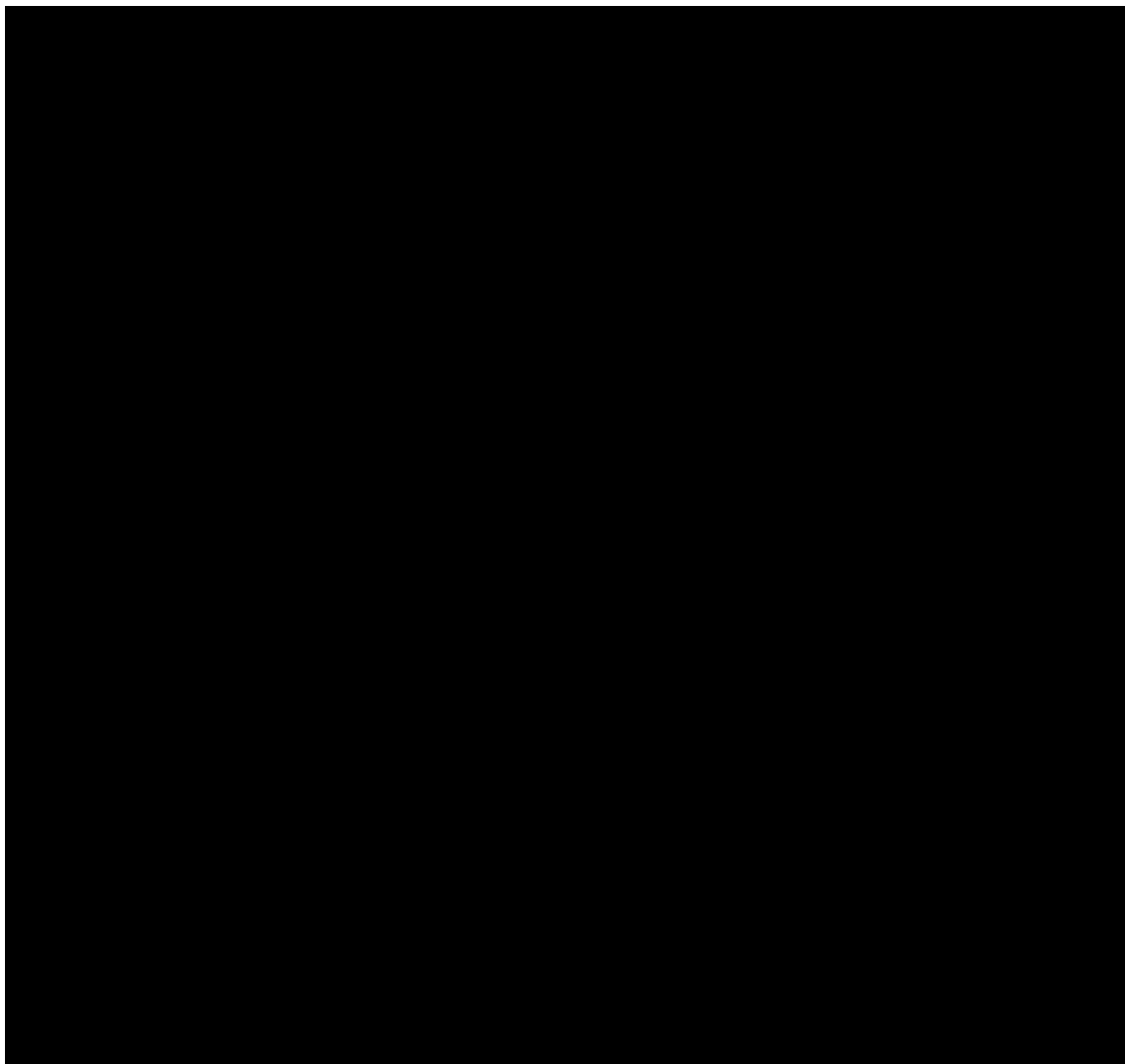
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14



15 Q All right. Let's take a look at that.
16 (Exhibit No. 48 was premarked for
17 identification.)

18 BY MR. KENNEDY:

19 Q Let me show you Exhibit 48.

20 Now, put this in context. The first
21 letter comes from the DEA to all distributors in
22 2006 outlining the responsibilities of a
23 distributor with respect to controlled substances.
24 2006, that's the first letter from the DEA,

1 correct?

2 MR. BUSH: Objection.

3 THE WITNESS: Again, if you say it is.

4 I -- I don't -- I don't remember.

5 BY MR. KENNEDY:

6 Q Looking at this chart, do you -- do you
7 recall, sir, that -- so you get the first DEA
8 letter in '06, and then about a year and a half
9 later on 12/1/07, CVS for the first time creates
10 standard operating procedures for controlled
11 substances.

12 Do you remember that in '07, sir?

13 MR. BUSH: Objection.

14 THE WITNESS: I do not.

15 BY MR. KENNEDY:

16 Q Do you remember in that first version of
17 the standard operating procedures with respect to
18 suspicious order monitoring, it's stated "being
19 developed and written."

20 You remember that, don't you?

21 MR. BUSH: Objection.

22 THE WITNESS: I do not.

23 BY MR. KENNEDY:

24 Q You told us there were various

1 revisions. The second revision of the standard
2 operating procedures at CVS, that suspicious order
3 monitoring section again stated "being developed
4 and written." Do you remember that when it came
5 across your desk?

6 MR. BUSH: Objection.

7 THE WITNESS: I do not.

8 BY MR. KENNEDY:

9 Q The third version of the standard
10 operating procedures at CVS were put into effect
11 in 1/28/10. When that came across your desk, do
12 you remember for suspicious order monitoring it
13 again stated "being developed and written"? Do
14 you recall that?

15 MR. BUSH: Objection.

16 THE WITNESS: I don't.

17 BY MR. KENNEDY:

18 Q And at this point in time, you're the
19 one reviewing the IRR reports to monitor
20 suspicious orders, correct?

21 A Yes.

22 Q And you don't remember that being stated
23 in the -- in the written policies, "being
24 developed and written"?

1 MR. BUSH: Objection.

2 THE WITNESS: There were policies out
3 there that were constantly being updated. I -- I
4 don't recall nothing being out there, but I don't
5 recall -- I don't recall three years of being
6 developed.

7 BY MR. KENNEDY:

8 Q Well, let's look to April 30, 2010.

9 The standard operating procedures are
10 again revised for controlled substances, and in
11 the section for suspicious order monitoring, it
12 again states "being developed and written."

13 When that came across your desk, do you
14 remember that?

15 MR. BUSH: Objection.

16 THE WITNESS: I don't even know who this
17 would have came from.

18 BY MR. KENNEDY:

19 Q Sir, this period that I'm talking about,
20 this -- this '07 to '10, this three-year period,
21 you -- you realize we've gone through that CVS
22 would have gotten two more letters from the DEA
23 outlining their responsibilities with respect to
24 controlled substances.

1 Do you realize that?

2 MR. BUSH: Objection.

3 BY MR. KENNEDY:

4 Q Two more letters --

5 MR. BUSH: Objection.

6 BY MR. KENNEDY:

7 Q -- during this period.

8 MR. BUSH: Objection.

9 THE WITNESS: During our DEA audit in
10 Lumberton particularly, Donna Walker walked our
11 process. She reviewed what we had. She got the
12 information from our pharmacy manager. She was
13 pleased with what we had. I don't recall what we
14 had. I don't recall what we -- what the pharmacy
15 manager gave her. I showed her our SOM program.
16 She was -- she was pleased with that. Donna
17 Walker came in early 2005, '06 maybe, and did a
18 nine-month audit in our building.

19 BY MR. KENNEDY:

20 Q I'm not talking about '05 and '06. I'm
21 talking about a period of time after that. I'm
22 talking about a period of time where the DEA has
23 sent CVS three separate letters outlining their
24 duties and responsibilities with suspicious order

1 monitoring. And during that period, your SOPs
2 with respect to suspicious order monitoring on
3 four different occasions stated "being developed
4 and written."

5 And you saw that every single time it
6 came across your desk, did you not, sir?

7 MR. BUSH: Objection.

8 THE WITNESS: I don't recall that.

9 BY MR. KENNEDY:

10 Q And you knew, sir, all this interaction
11 with the DEA, you knew that the lack of any, any
12 written suspicious order monitoring policies, you
13 knew and you understood that that was a big issue
14 with the DEA, did you not, sir?

15 MR. BUSH: Objection.

16 BY MR. KENNEDY:

17 Q Did you not understand that?

18 MR. BUSH: Objection.

19 THE WITNESS: I was very proud of where
20 we were with the DEA. She walked the process.

21 BY MR. KENNEDY:

22 Q Did you understand that your failure --
23 CVS's failure to have any written policies in four
24 versions, you knew and you understood that that

1 was a big issue with the DEA, sir, did you not?

2 A No.

3 MR. BUSH: Objection.

4 THE WITNESS: No, I -- I -- we were
5 audited, our policies were audited. She saw our
6 SOM.

7 BY MR. KENNEDY:

8 Q Your policies were audited for the first
9 time in August 25th of 2010, sir. Do you remember
10 that?

11 A Not --

12 MR. BUSH: Objection.

13 THE WITNESS: -- off the top of my head,
14 no.

15 BY MR. KENNEDY:

16 Q And do you remember within 48 hours, you
17 put together written policies for the very first
18 time in the history of CVS, sir, in August of
19 2010, for the very first time?

20 MR. BUSH: Objection.

21 THE WITNESS: I don't recall that.

22 BY MR. KENNEDY:

23 Q And you were highly concerned, sir,
24 because you knew this was a big issue with the

1 DEA, the lack of policies, did you not, sir?

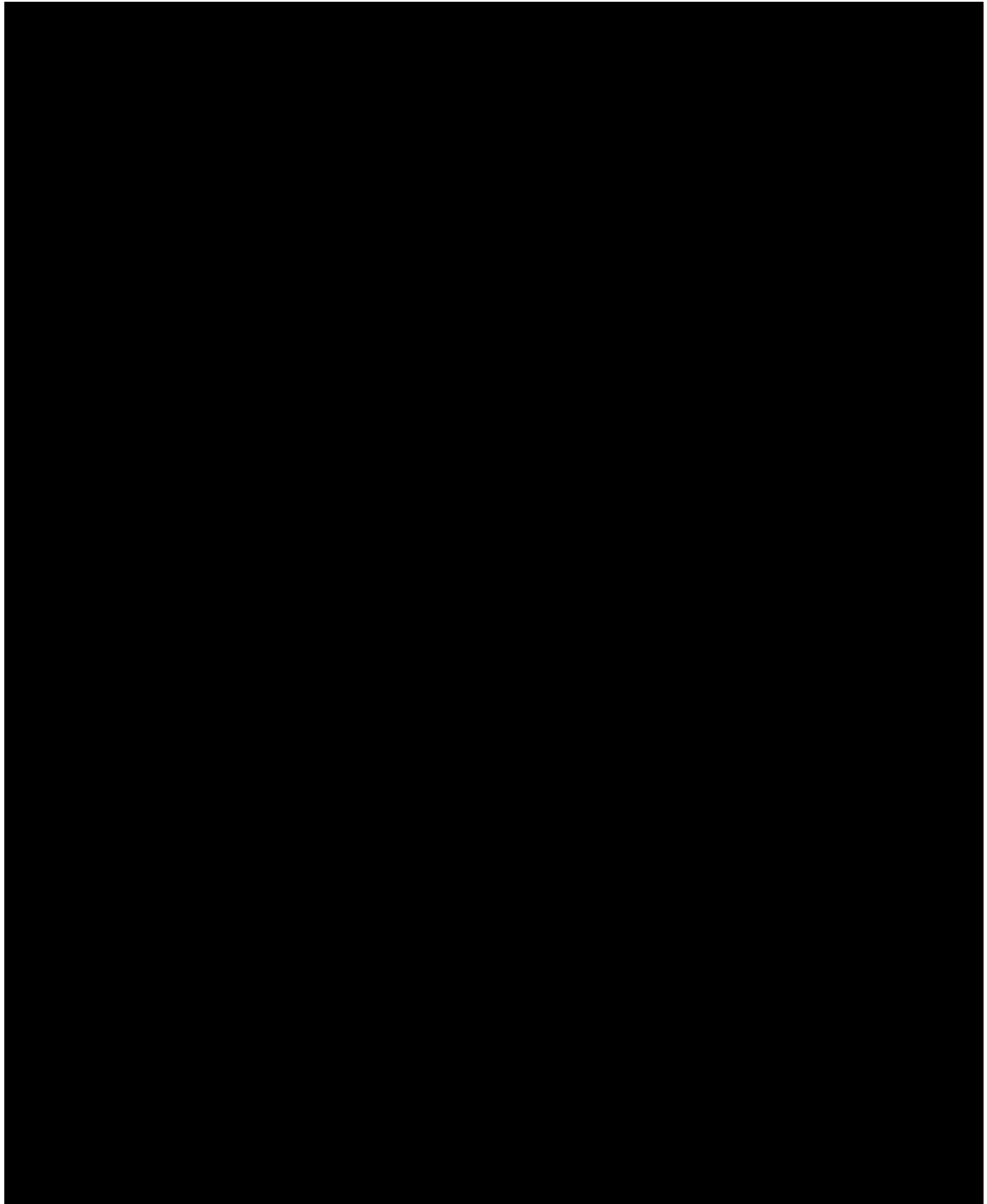
2 MR. BUSH: Objection.

3 THE WITNESS: I don't recall that.

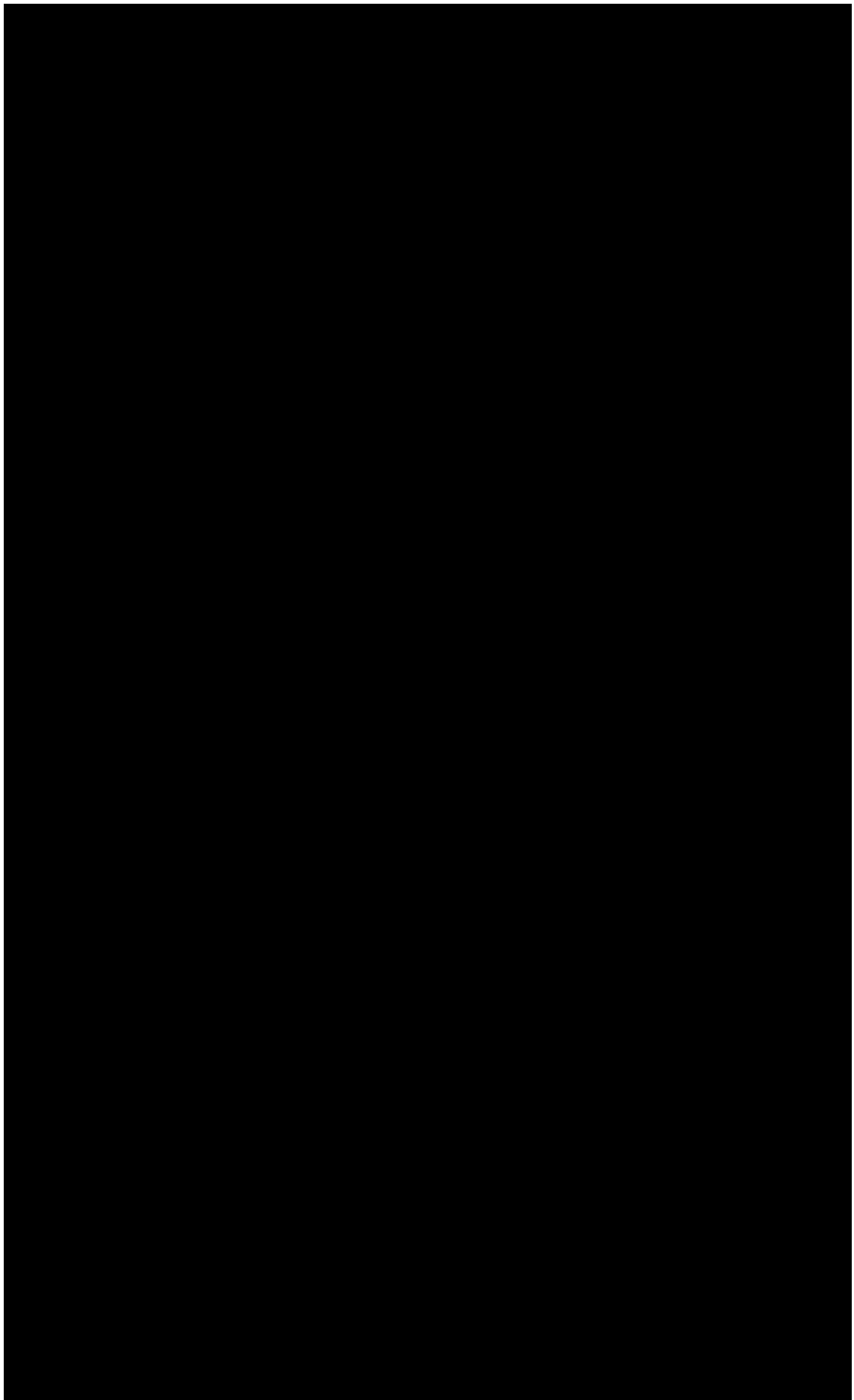
4 (Exhibit No. 49 was marked for
5 identification.)

6 BY MR. KENNEDY:

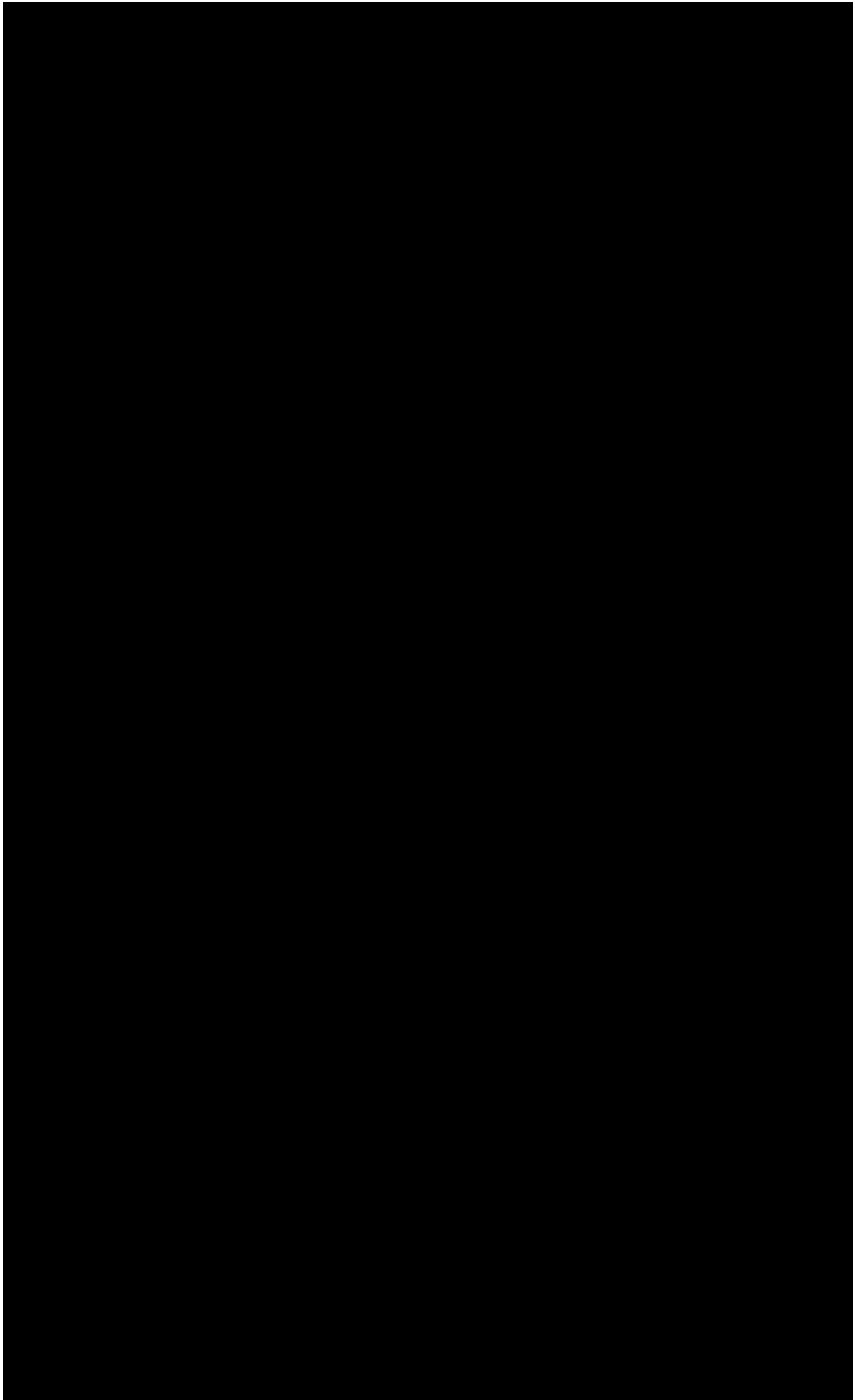
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



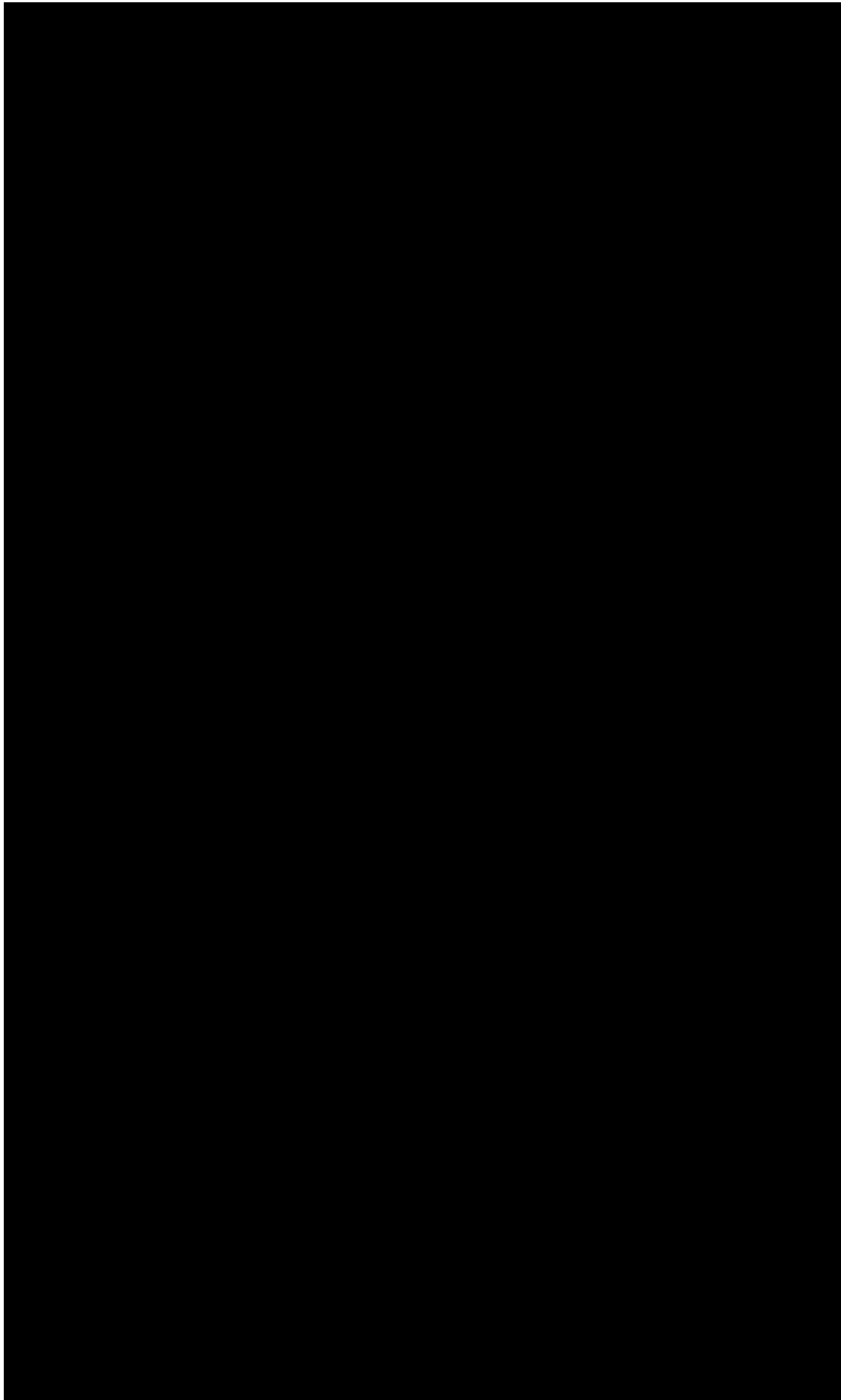
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



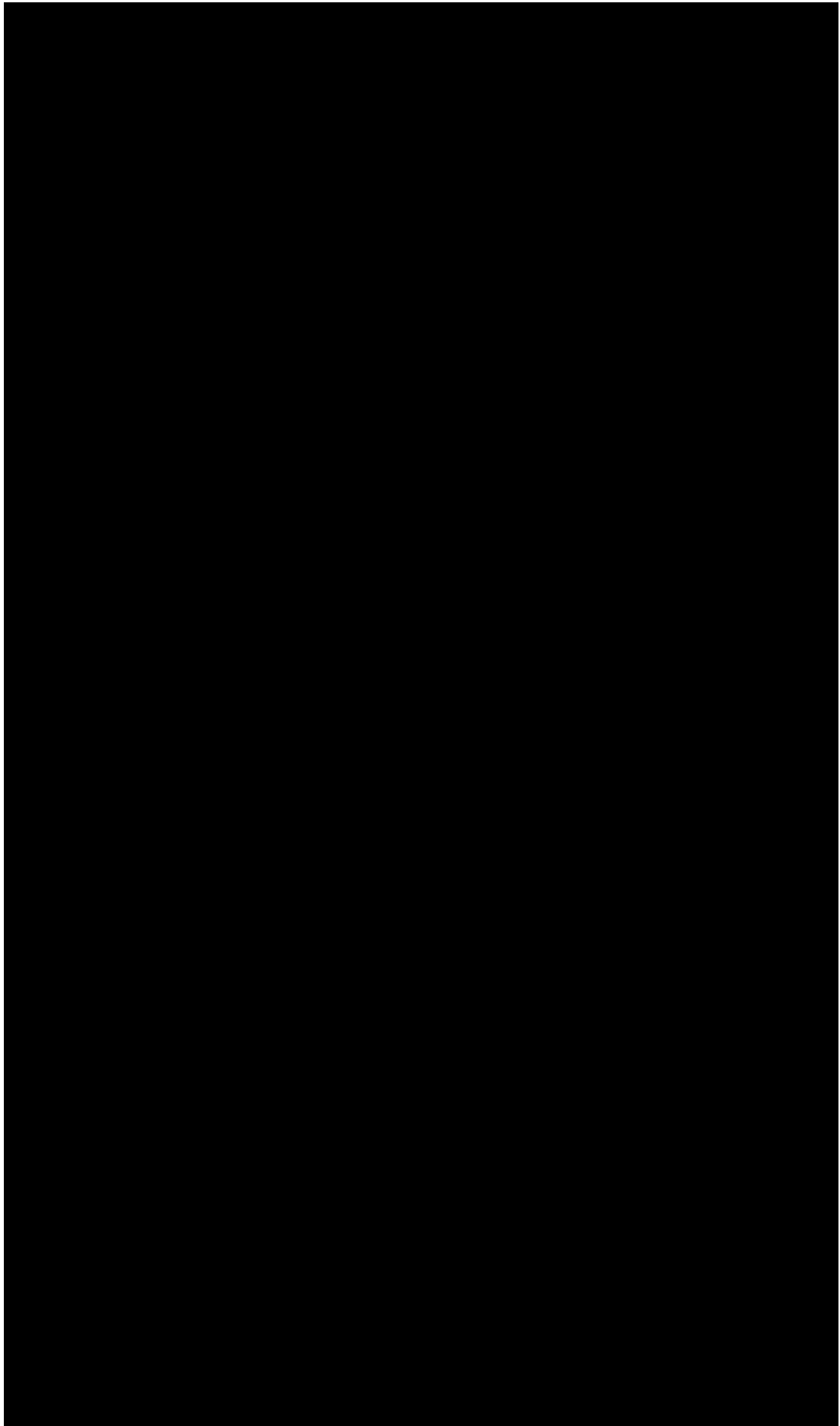
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



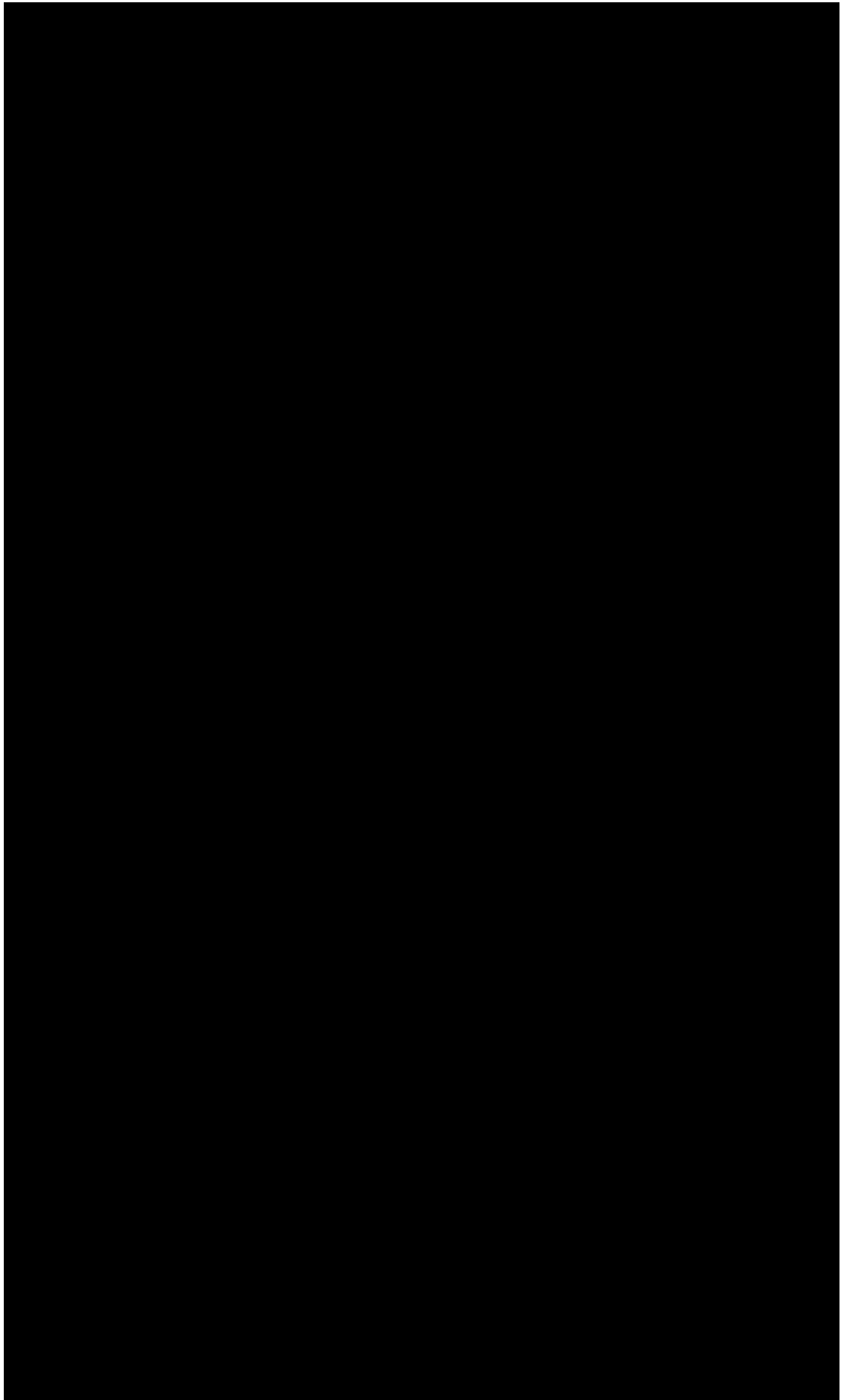
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



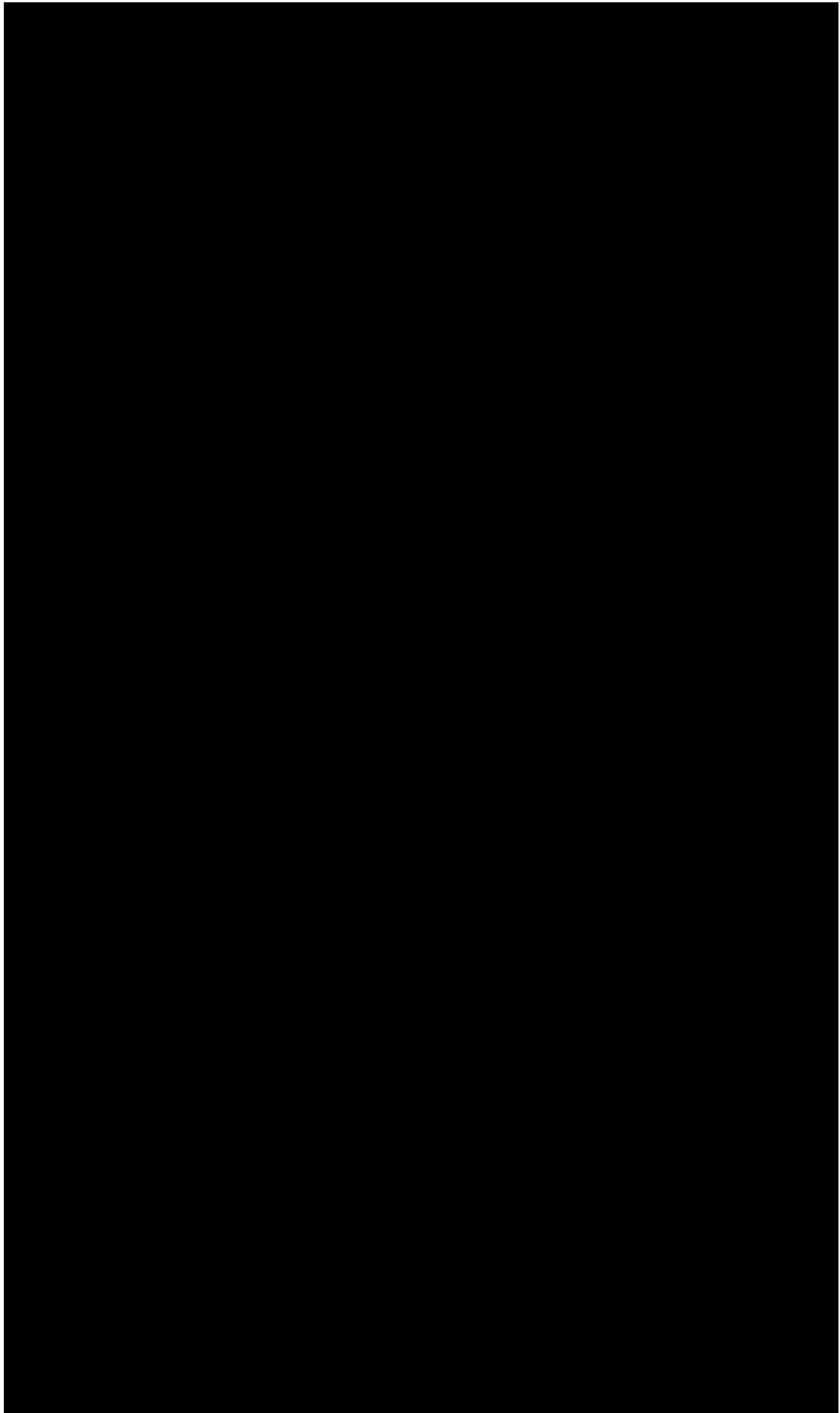
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



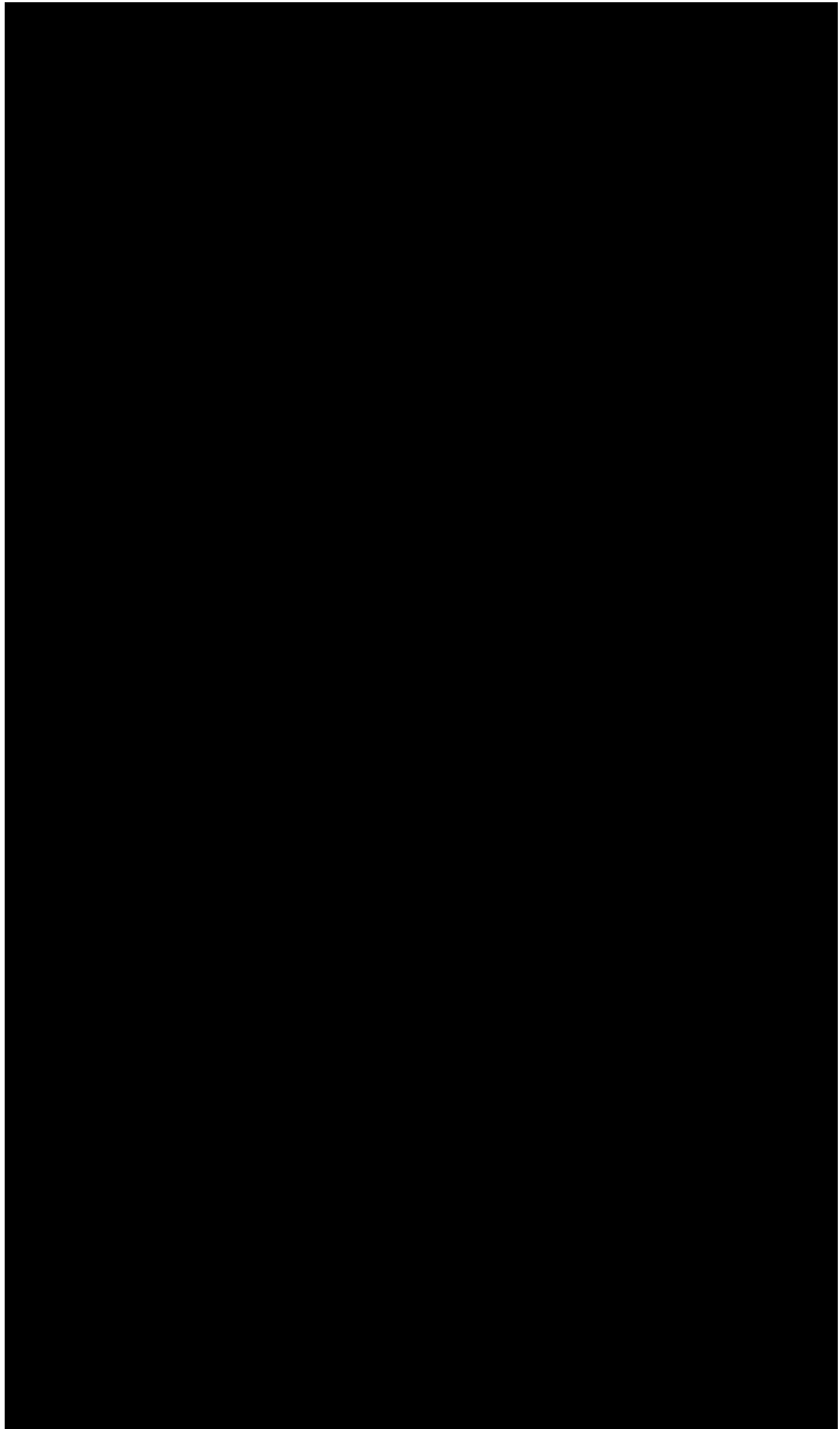
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



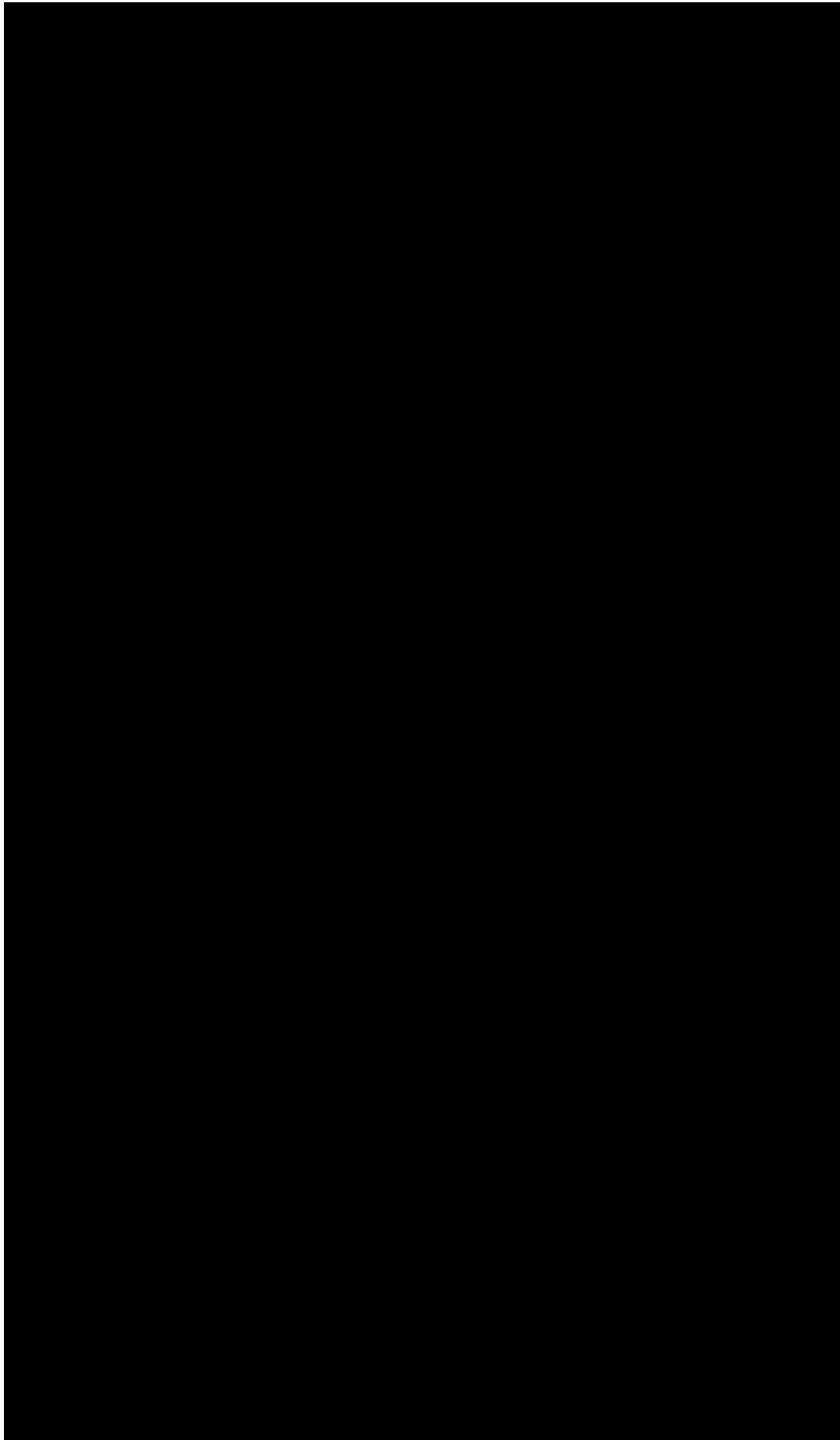
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



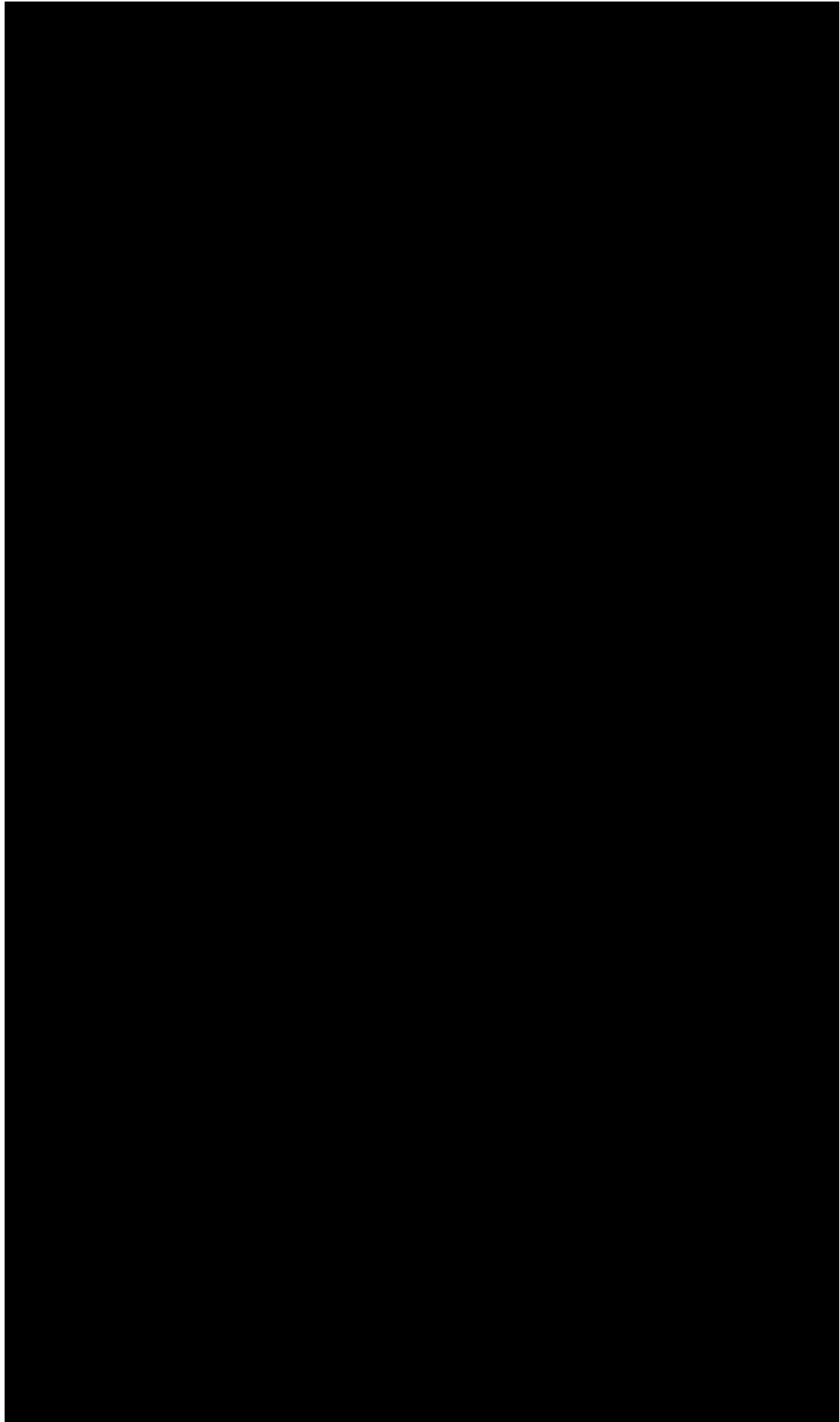
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



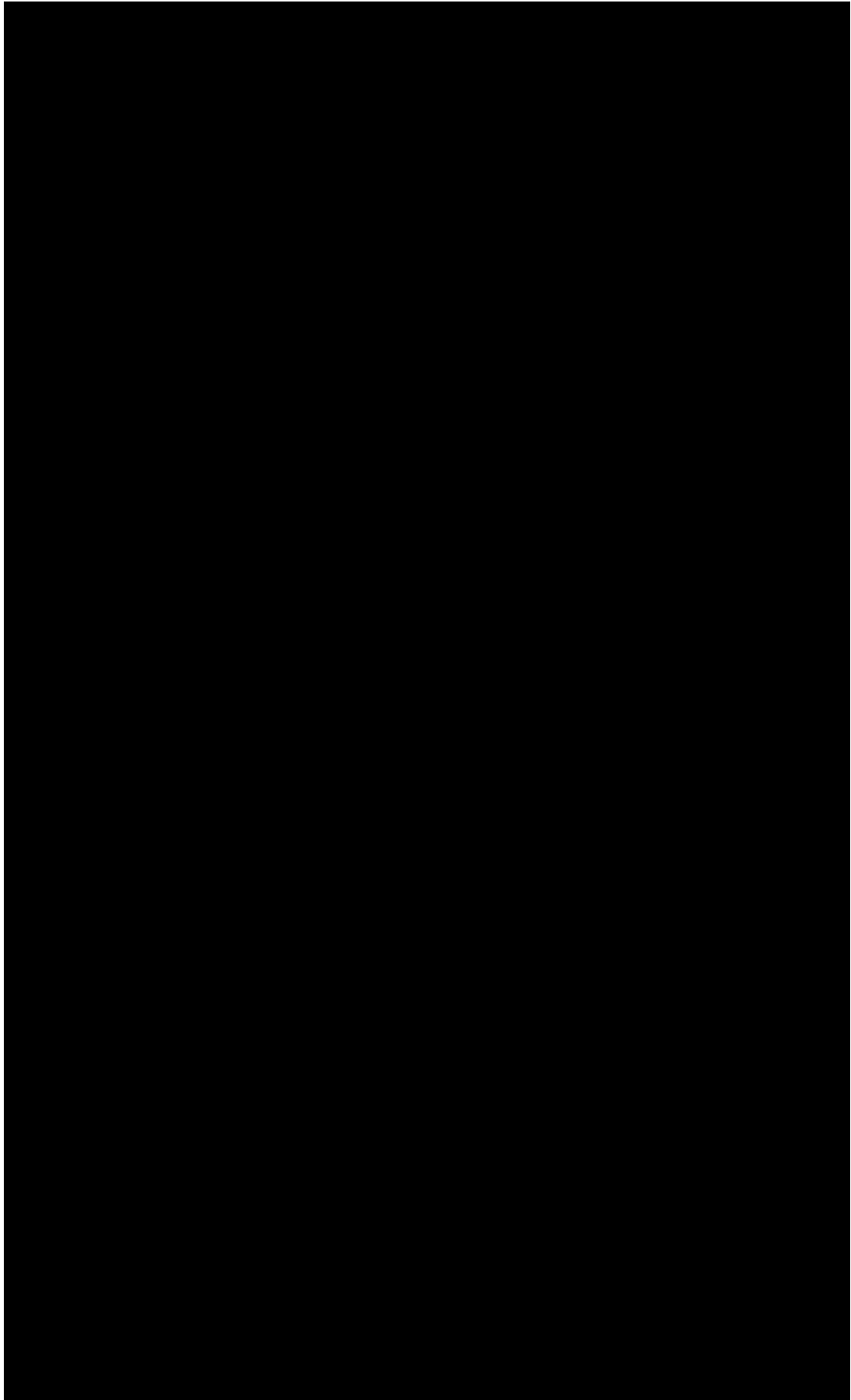
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



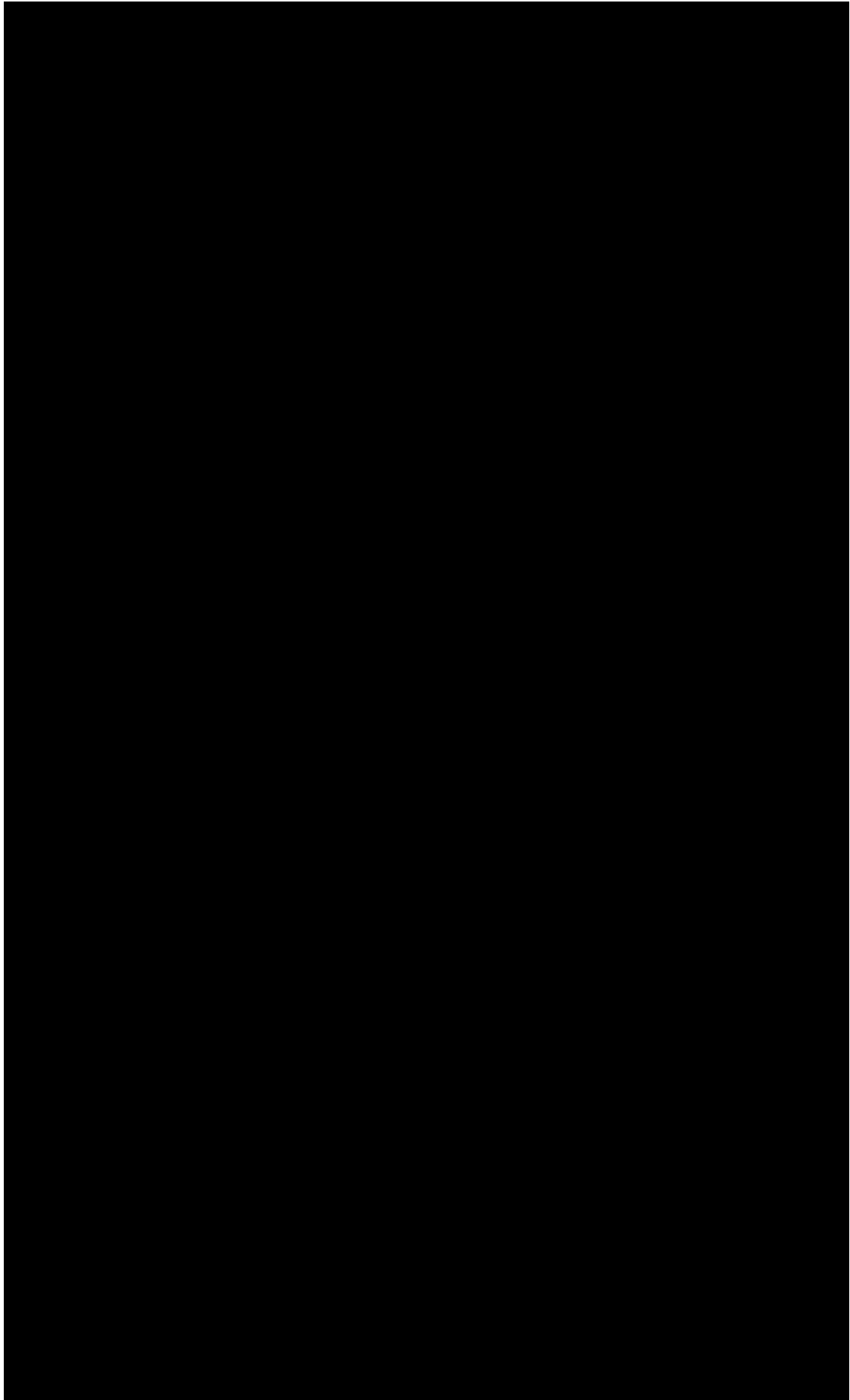
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



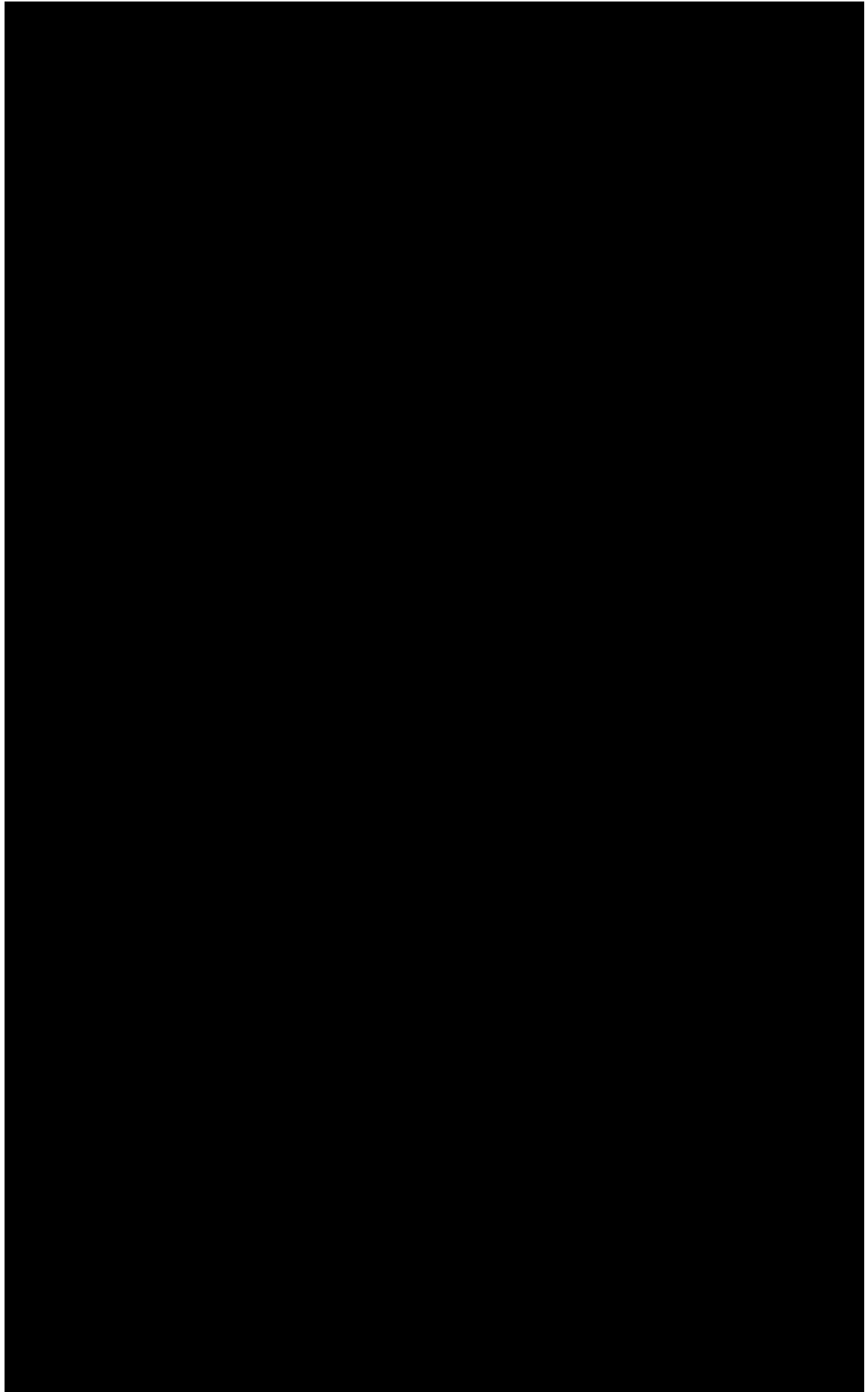
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



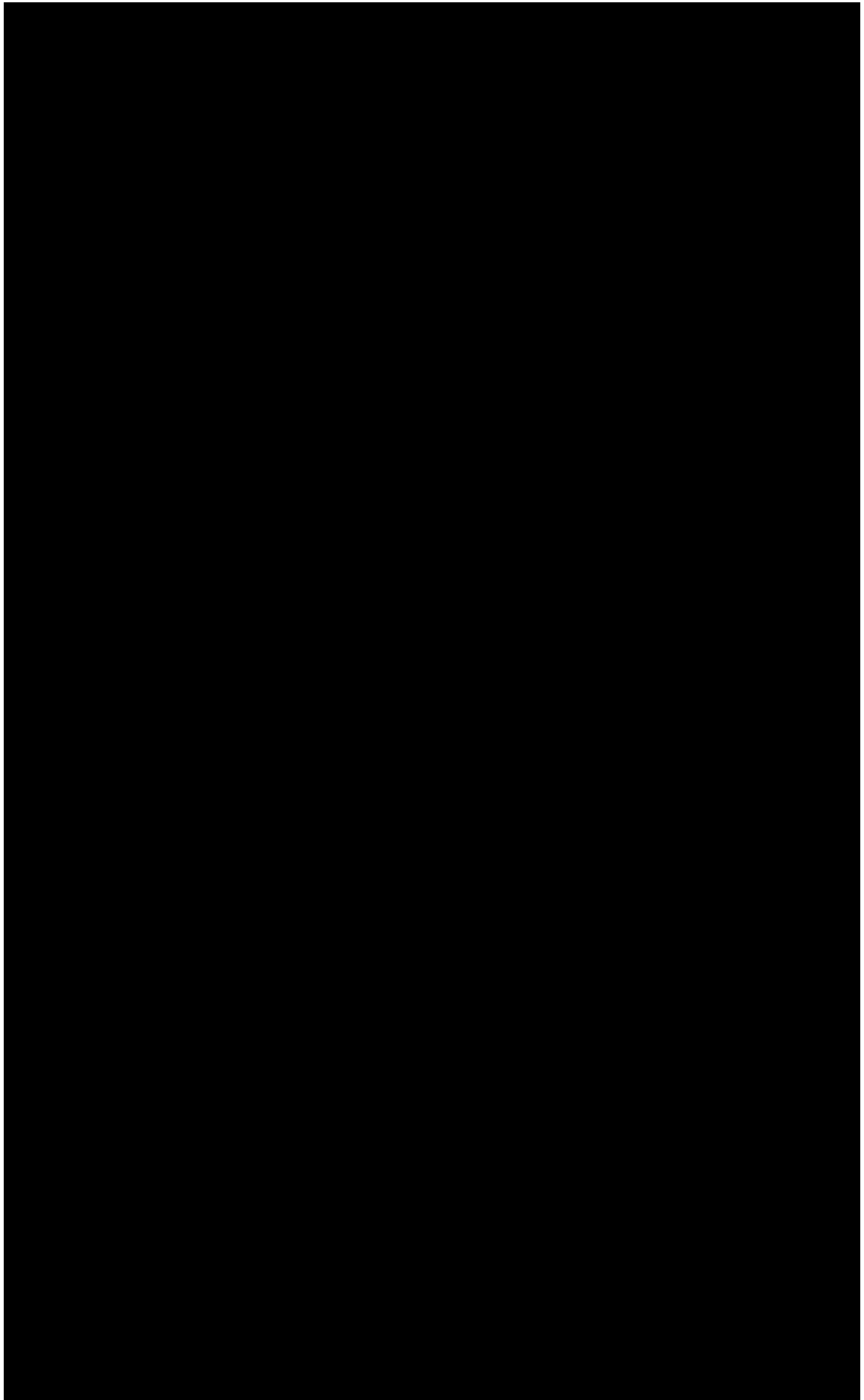
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



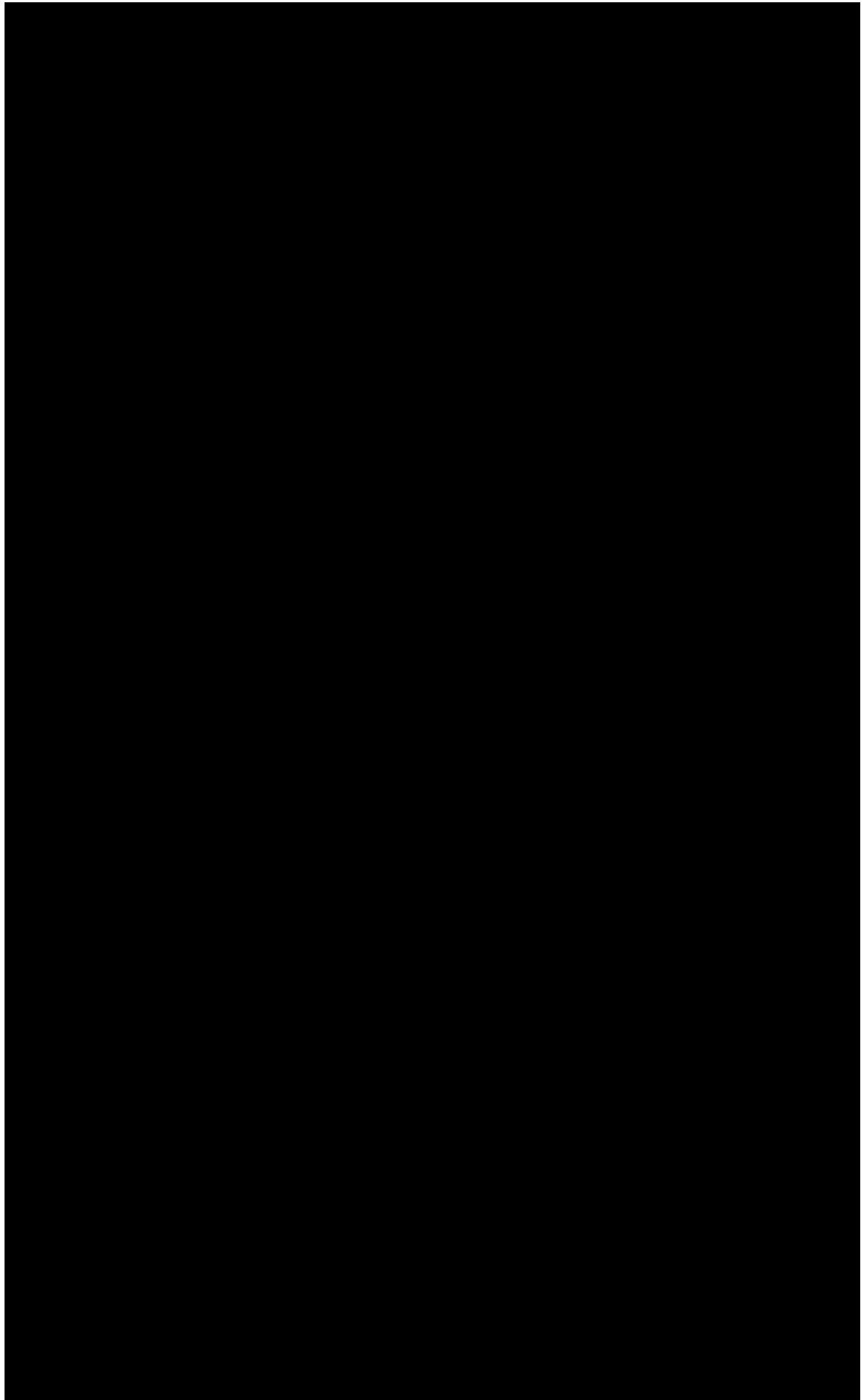
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



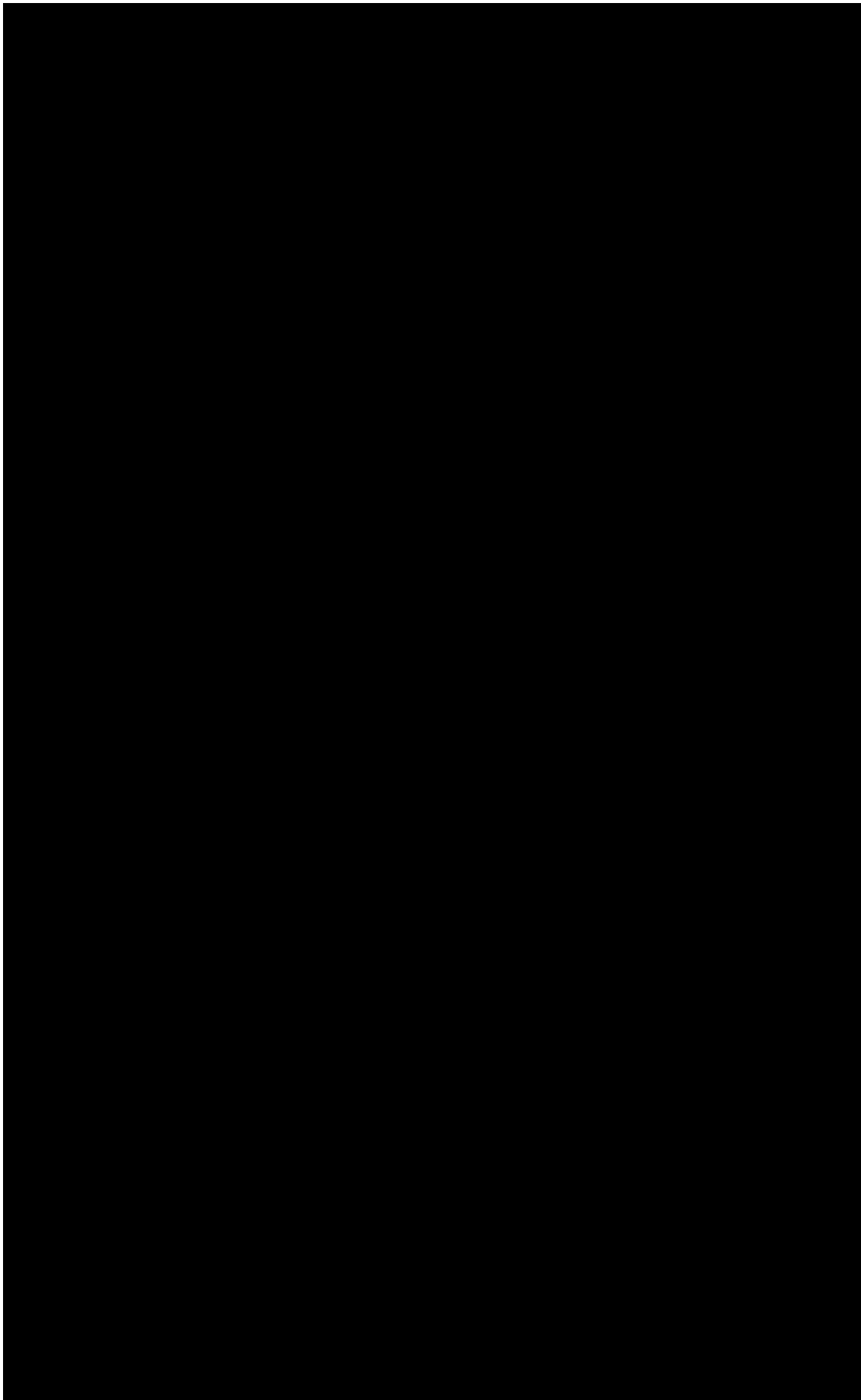
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



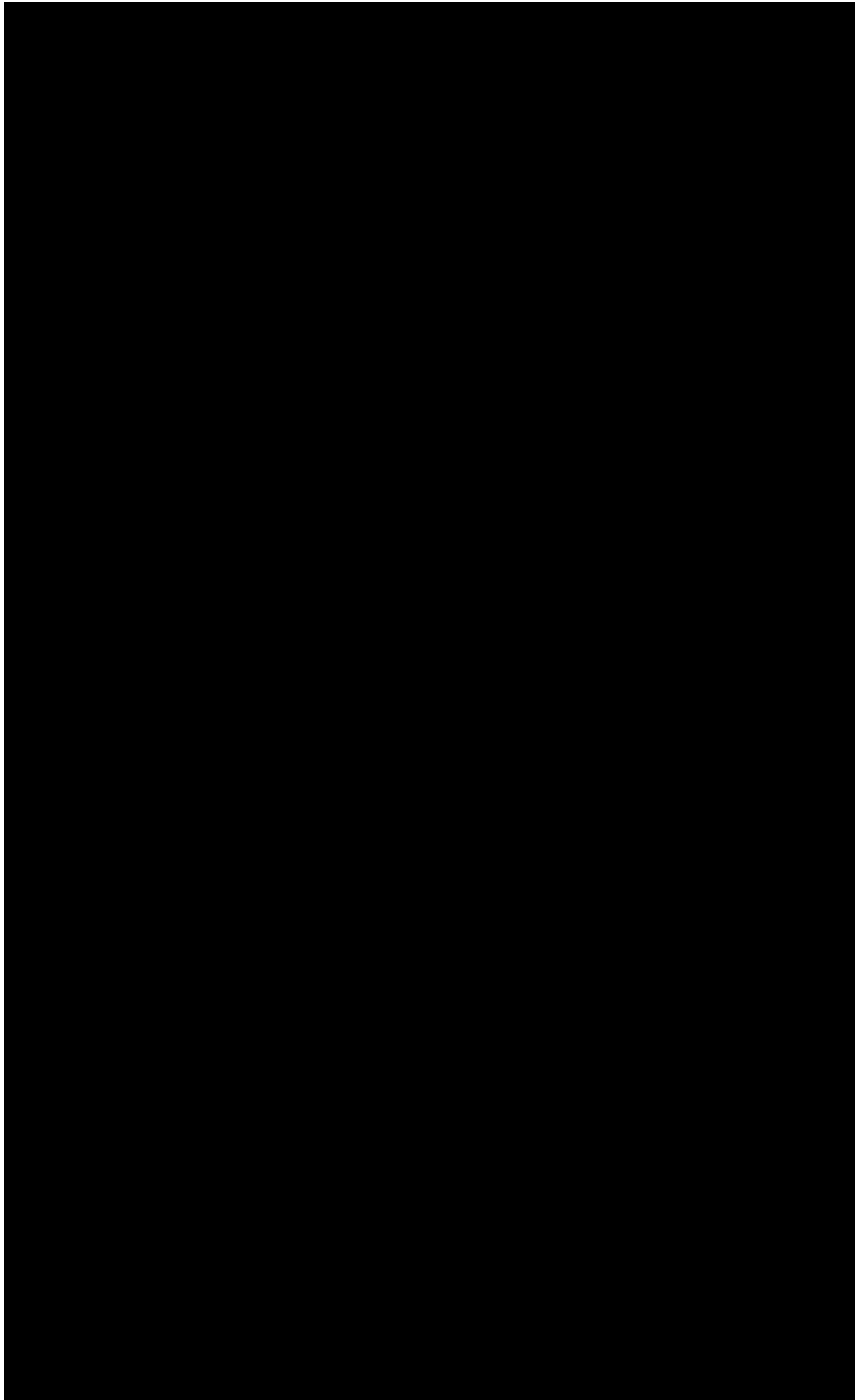
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



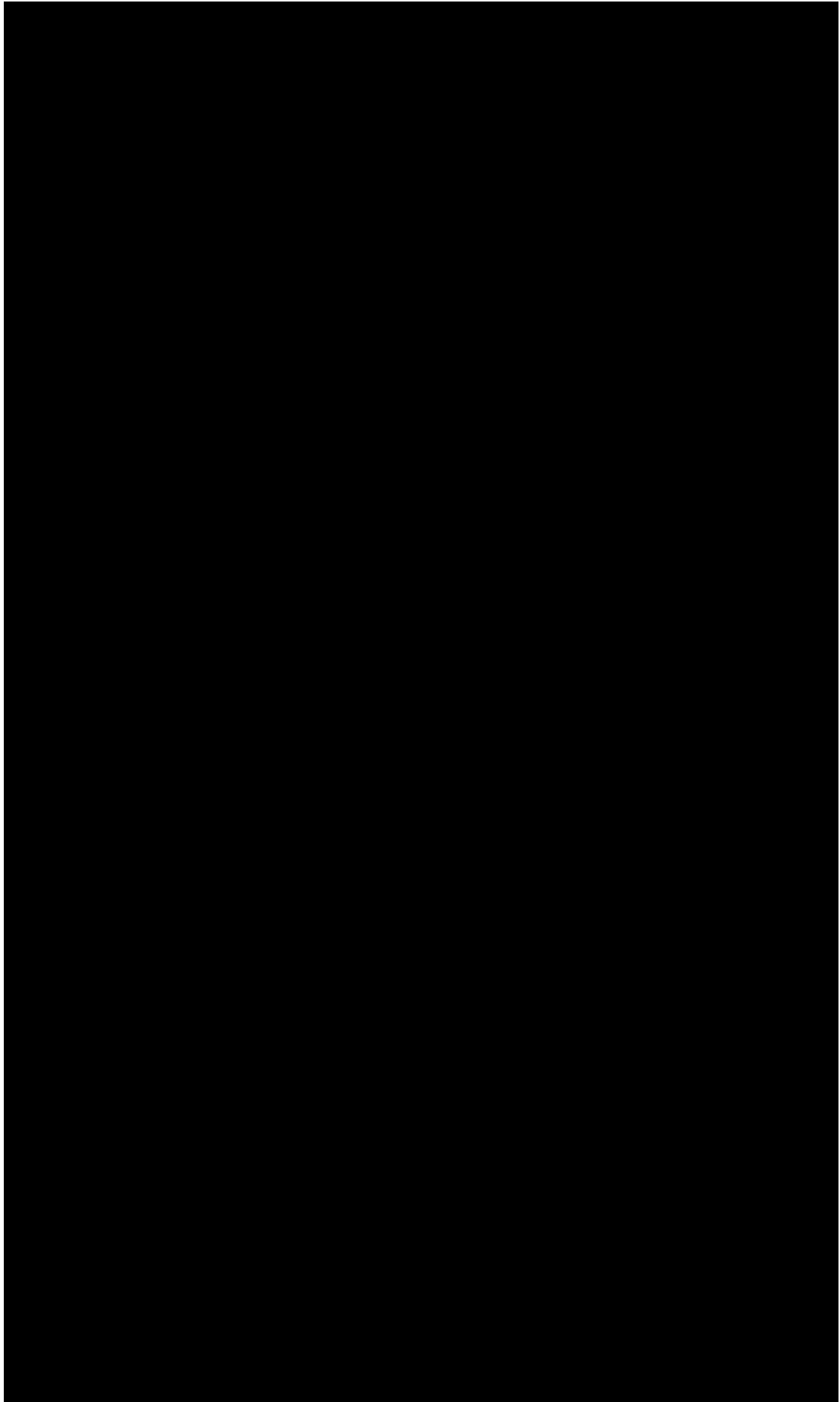
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



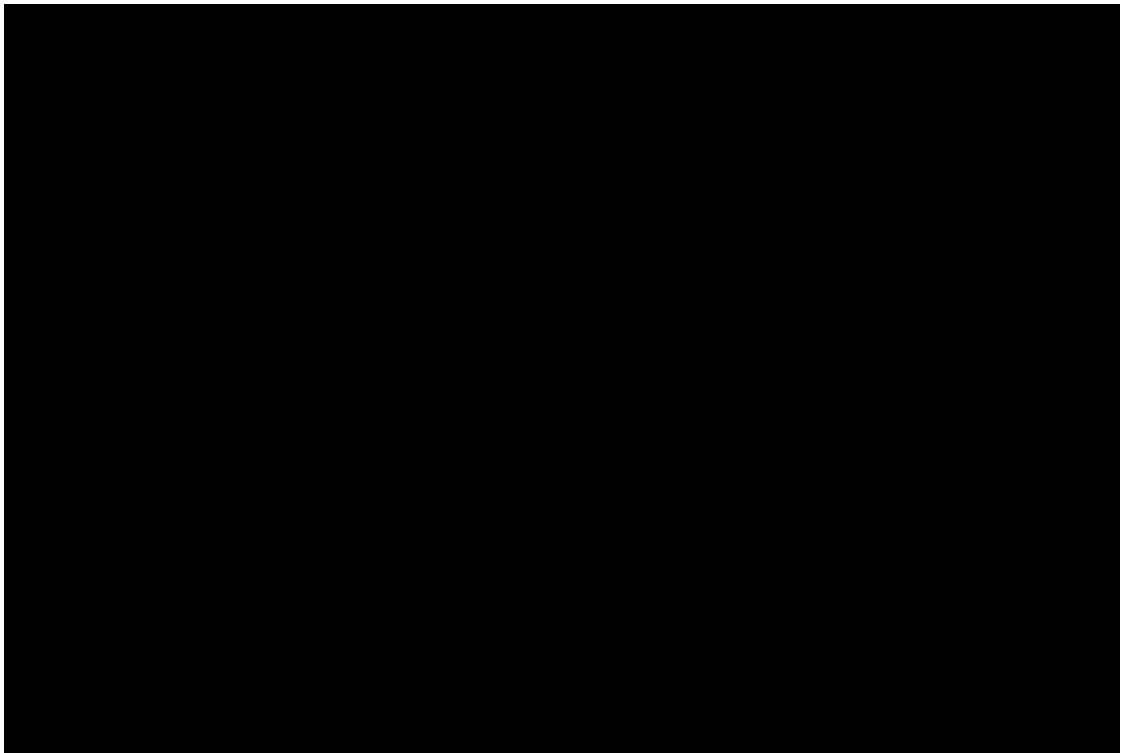
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10



11 Q Let's look at 16. This document is from
12 10/8/2010. All right? Is it titled on the first
13 page "Business Idea Description"? Do you see
14 that?

15 A I do.

16 Q And it says: "Submit to
17 IS-Business-Idea mailbox." What is IS?

18 A They are the group in corporate that can
19 write a query for your programs.

20 Q And this is requested for on behalf of
21 John Mortelliti. Is that you?

22 A Yes.

23 Q And your department at that point in
24 time was loss prevention, true?

1 A Yes.

2 Q And the title is "Control Drug IRR
3 Update." True?

4 A Yes.

5 Q And that is what we've been talking
6 about, the IRR report that's kind of foundational
7 to your monitoring program, true?

8 A Yes.

9 Q When was the last time you reviewed this
10 document?

11 A I don't -- I don't know. I --

12 Q It says: "Summary Description and
13 Objectives: DEA expects CVS to prevent suspicious
14 orders from being filled out of our DCs."

15 Did I read that right?

16 A You did.

17 Q And that would be true, that's what the
18 DEA expects, does it not?

19 A Yep.

20 Q Next sentence: "The current IRR does
21 not provide the proper information to meet the
22 DEA's needs."

23 Did I read that right?

24 A You read it correctly.

1 Q Next sentence, does it state: "We need
2 control drugs to be monitored by 'active
3 ingredient.' Currently the control drugs are
4 monitored by item. The IRR loses all order
5 history when the info on the item changes causing
6 CVS to be noncompliant with DEA expectations."

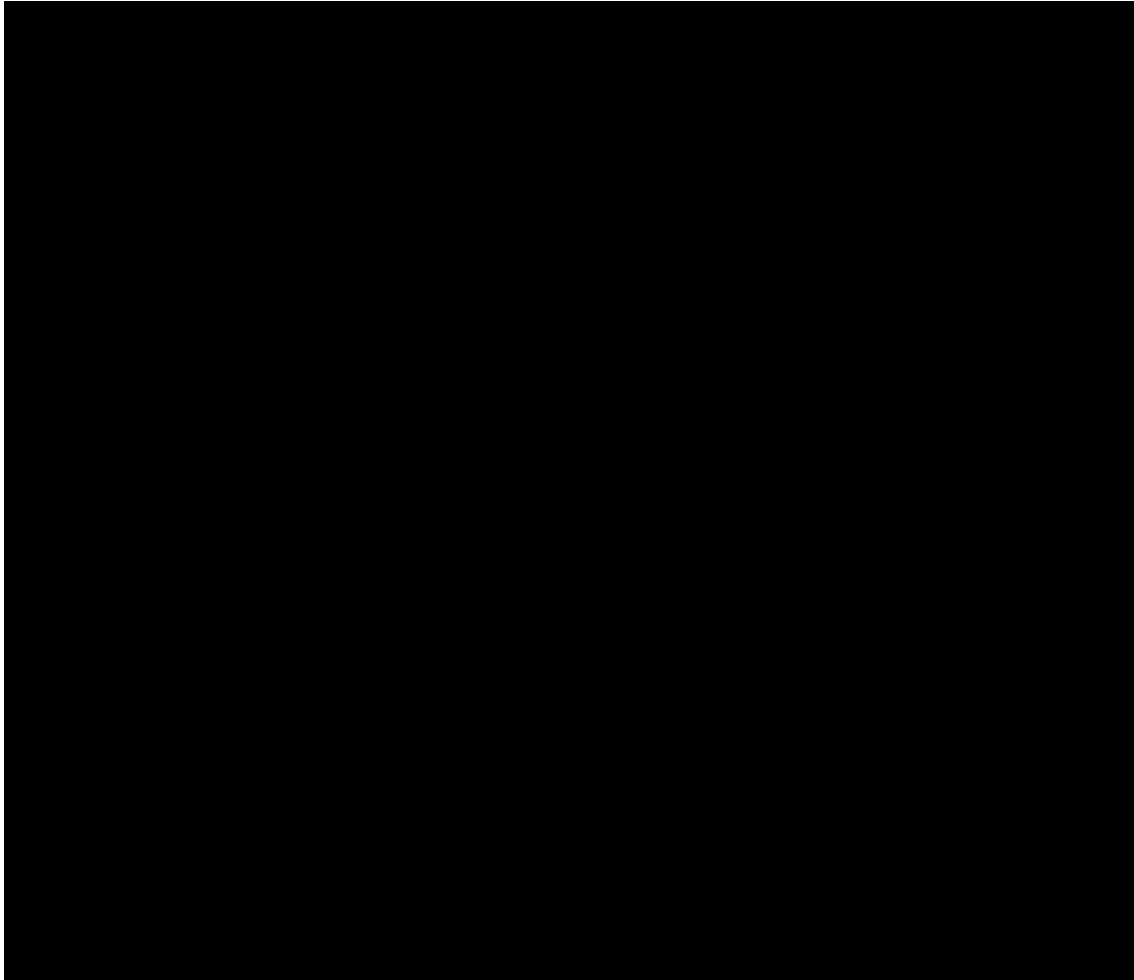
7 Did I read that correct?

8 A You read it correctly.

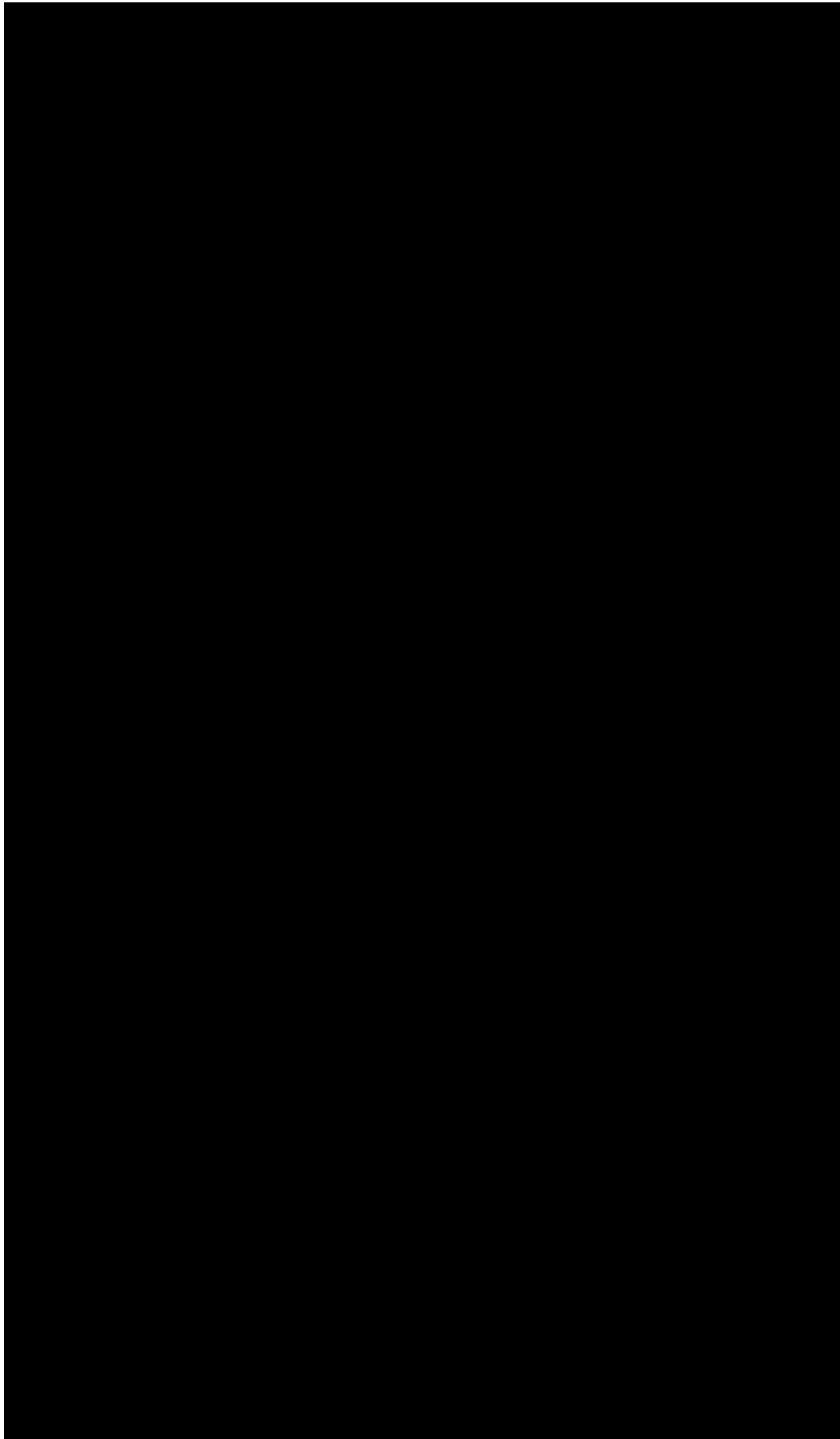
9 Q Were those your words, sir? Were those
10 your words?

11 A That's what I put in here.

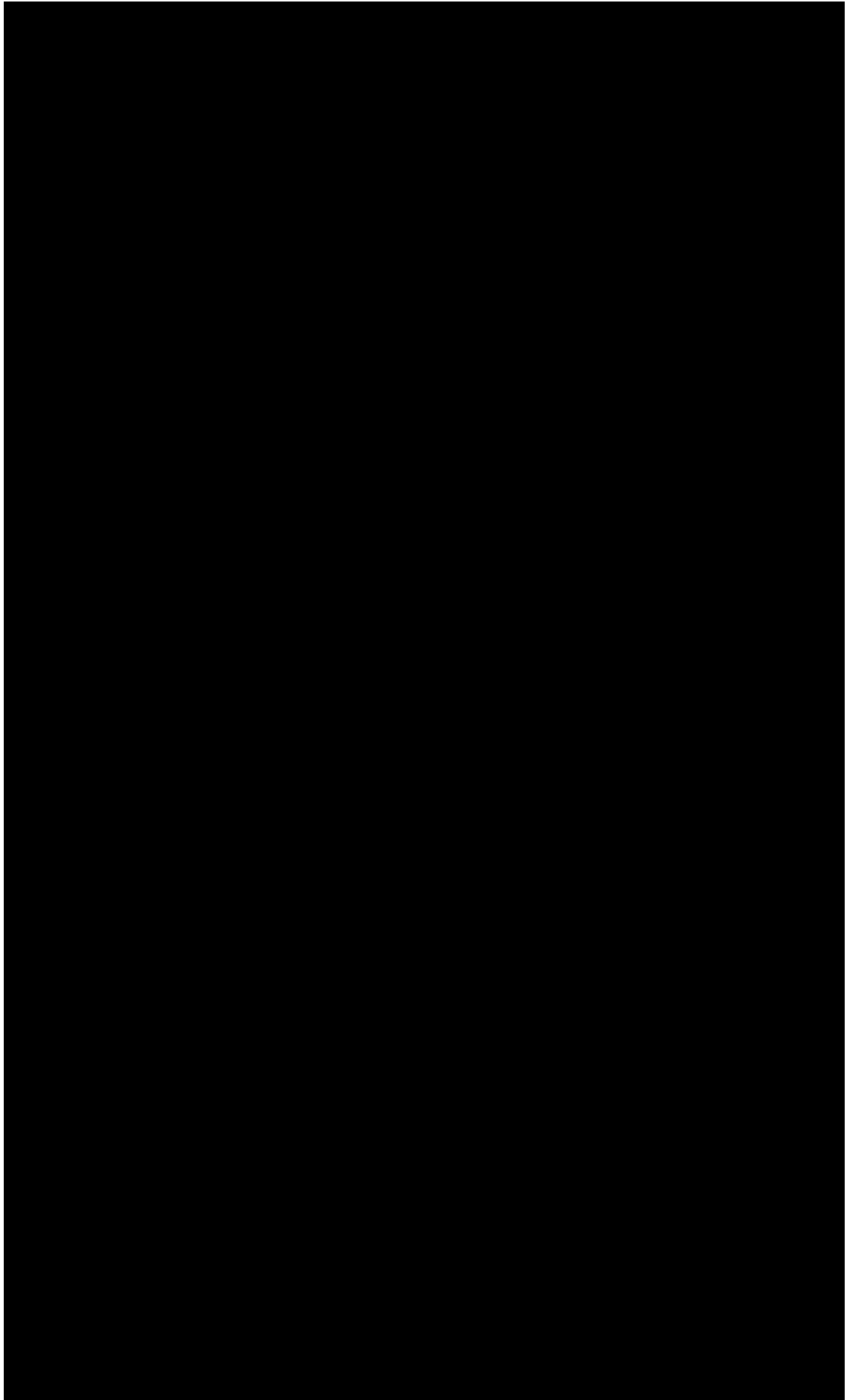
12
13
14
15
16
17
18
19
20
21
22
23
24



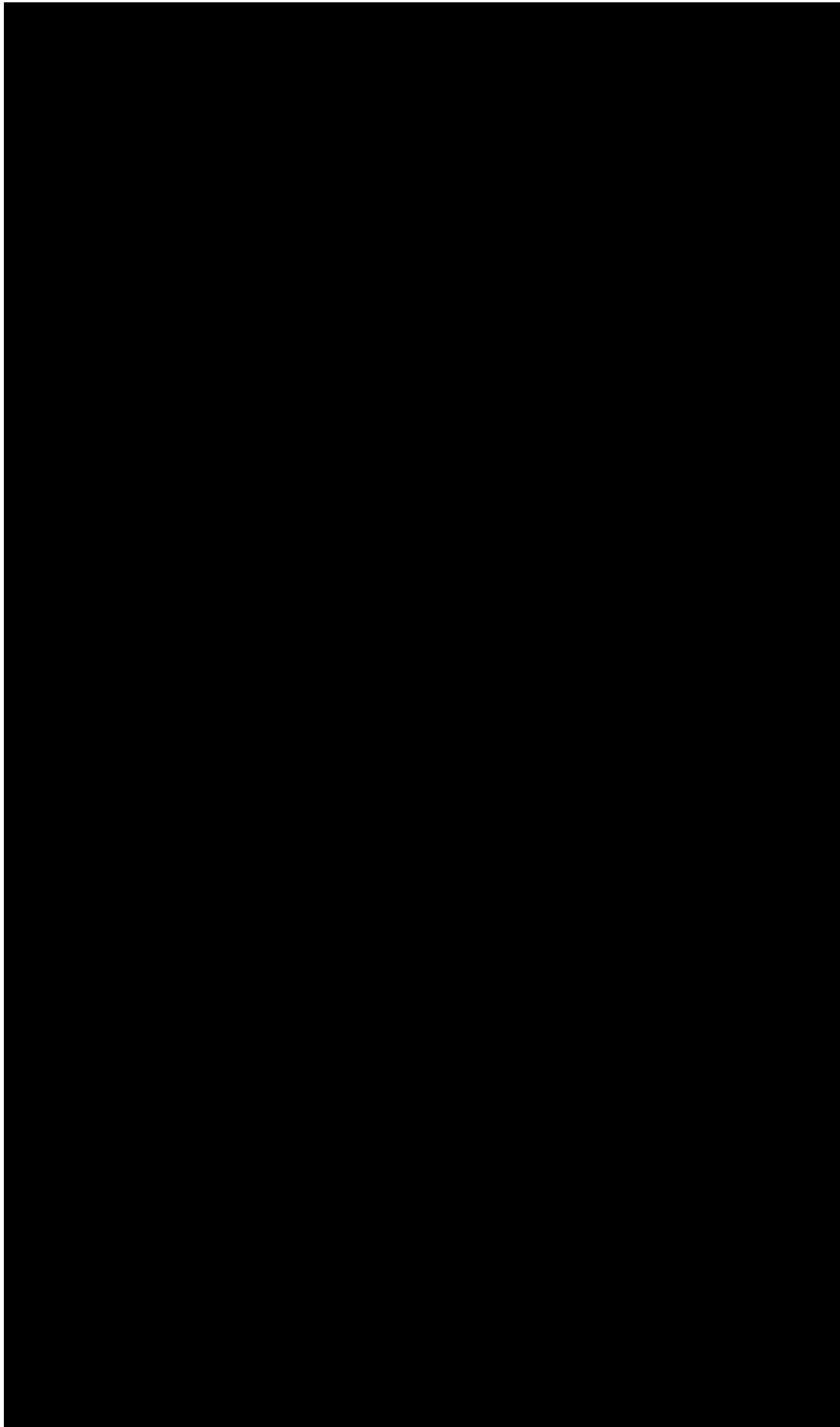
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1 if you were noncompliant on this date, can we
2 agree that you and CVS would have been
3 noncompliant all the way back from the beginning
4 with your IRR in '09 when you started reviewing?

5 MR. BUSH: Objection.

6 BY MR. KENNEDY:

7 Q Can we agree?

8 MR. BUSH: Objection.

9 THE WITNESS: No, we were compliant. I
10 worded this to get it pushed through the system.

11 BY MR. KENNEDY:

12 Q Sir, the IRR with the way it was
13 structured, monitoring by active ingredient, that
14 was true from the very beginning. True?

15 MR. BUSH: Objection. Misstates the
16 document and the testimony.

17 BY MR. KENNEDY:

18 Q Is that true?

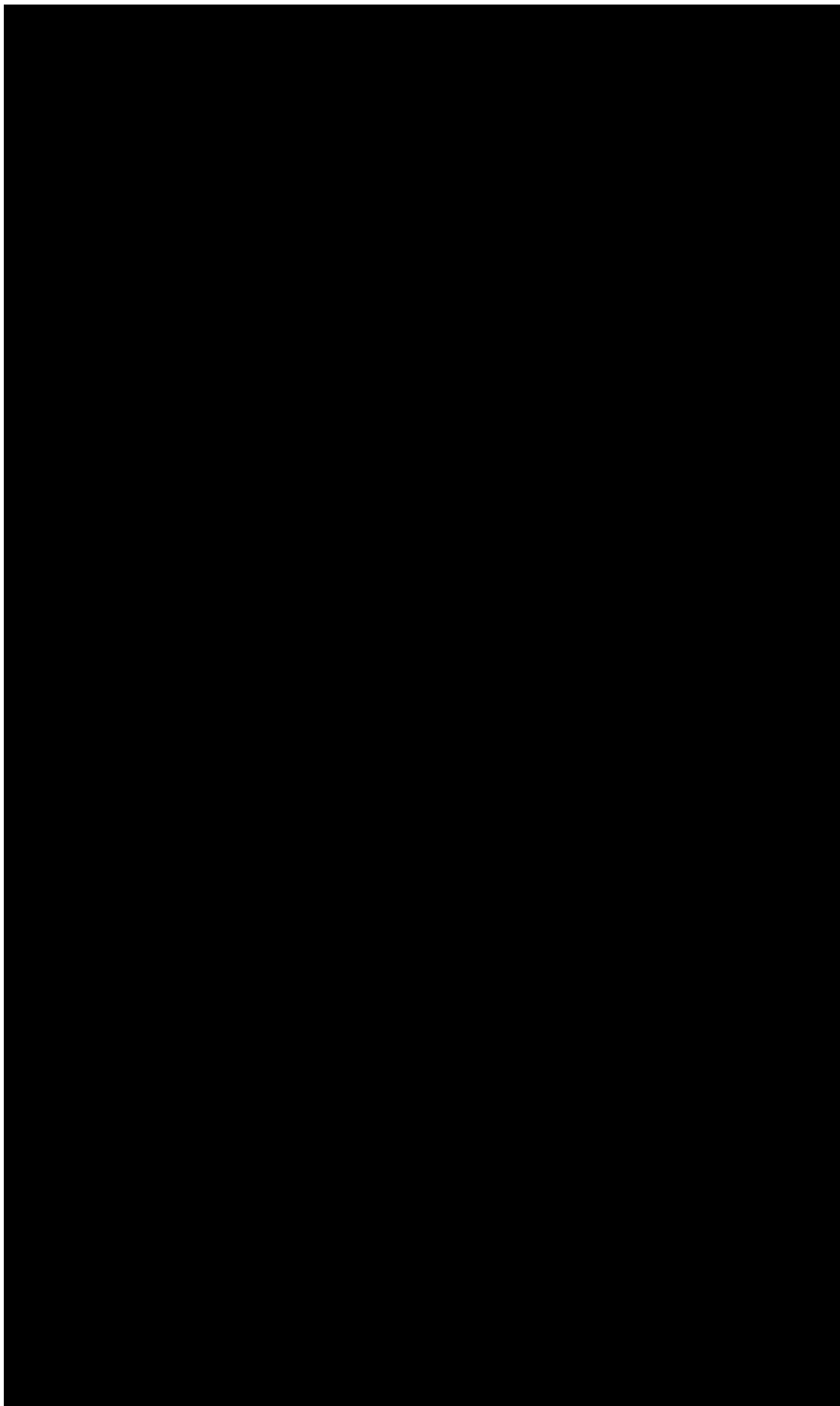
19 MR. BUSH: Objection.

20 BY MR. KENNEDY:

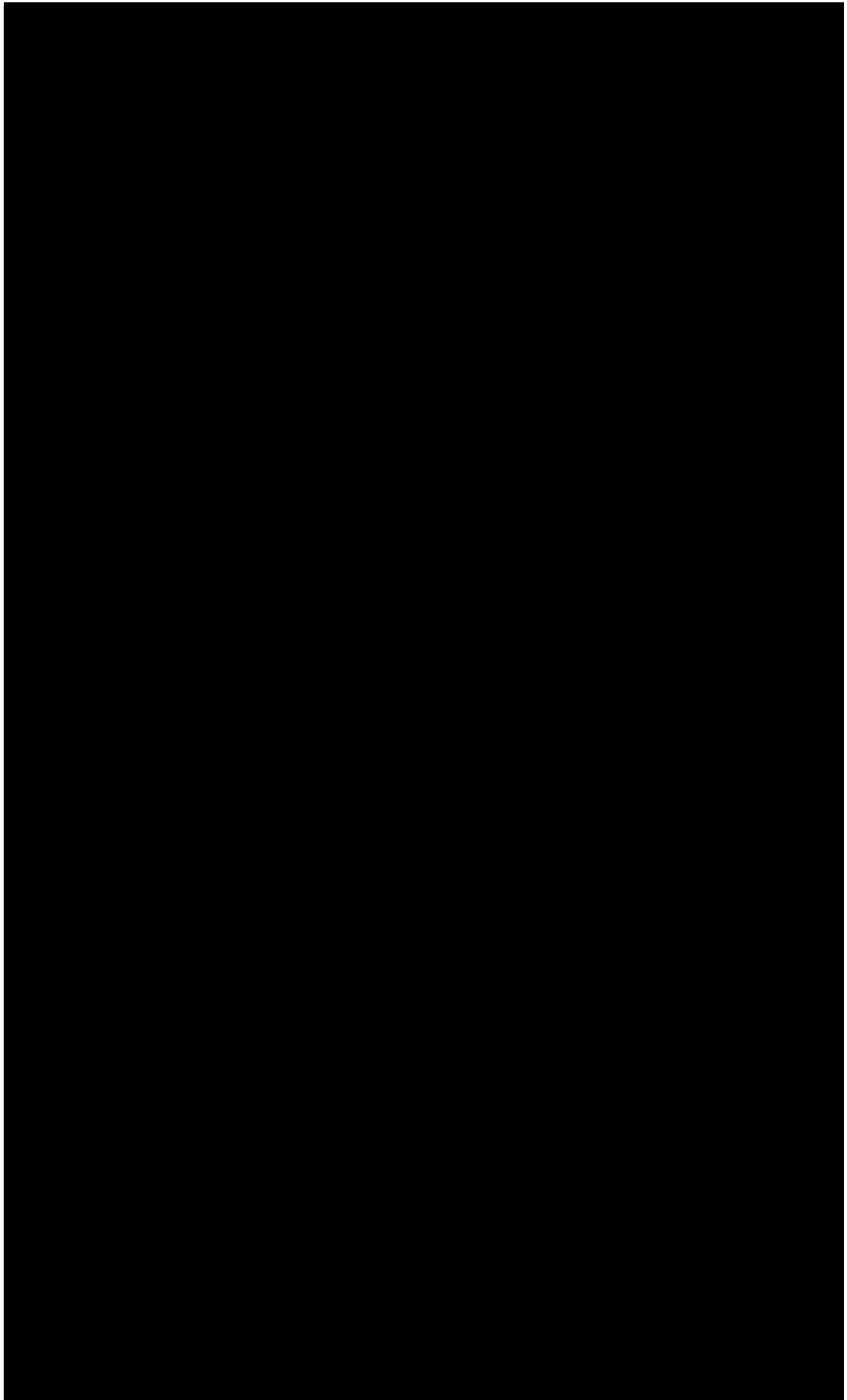
21 Q Excuse me. Let me restate that.

22 The monitoring of controlled substances
23 was not being monitored by active ingredient since
24 the beginning of the IRR's creation in '09,

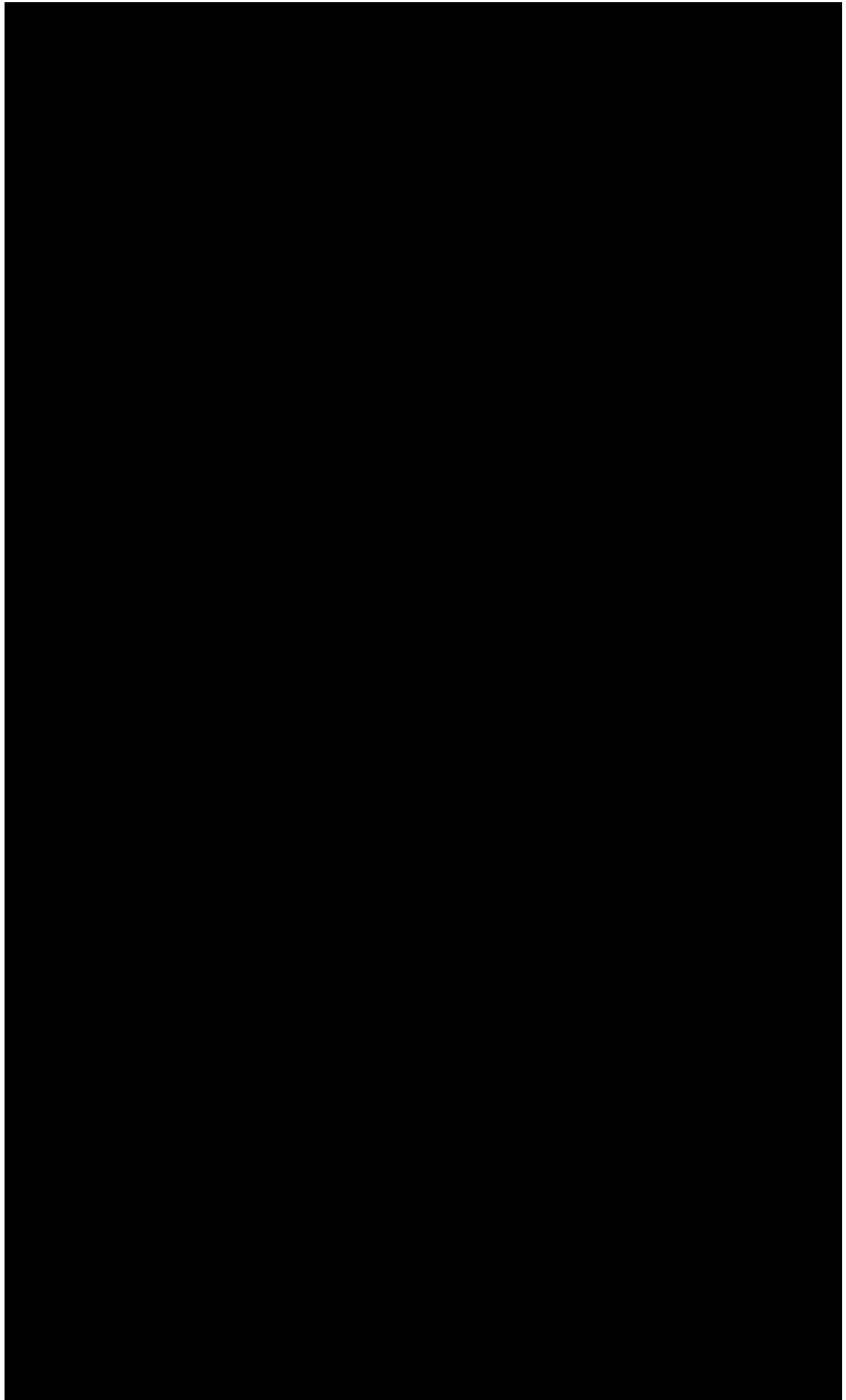
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



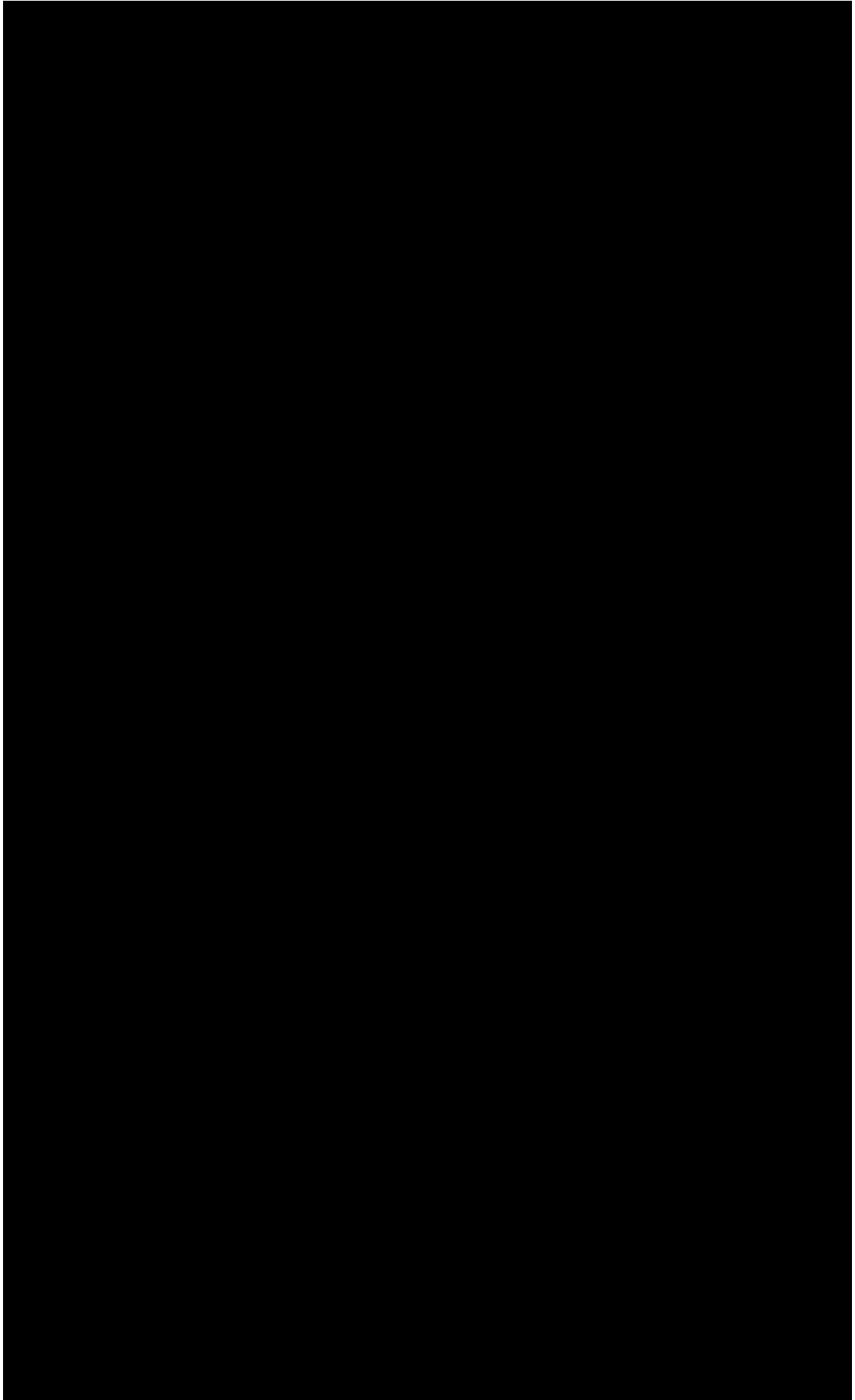
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



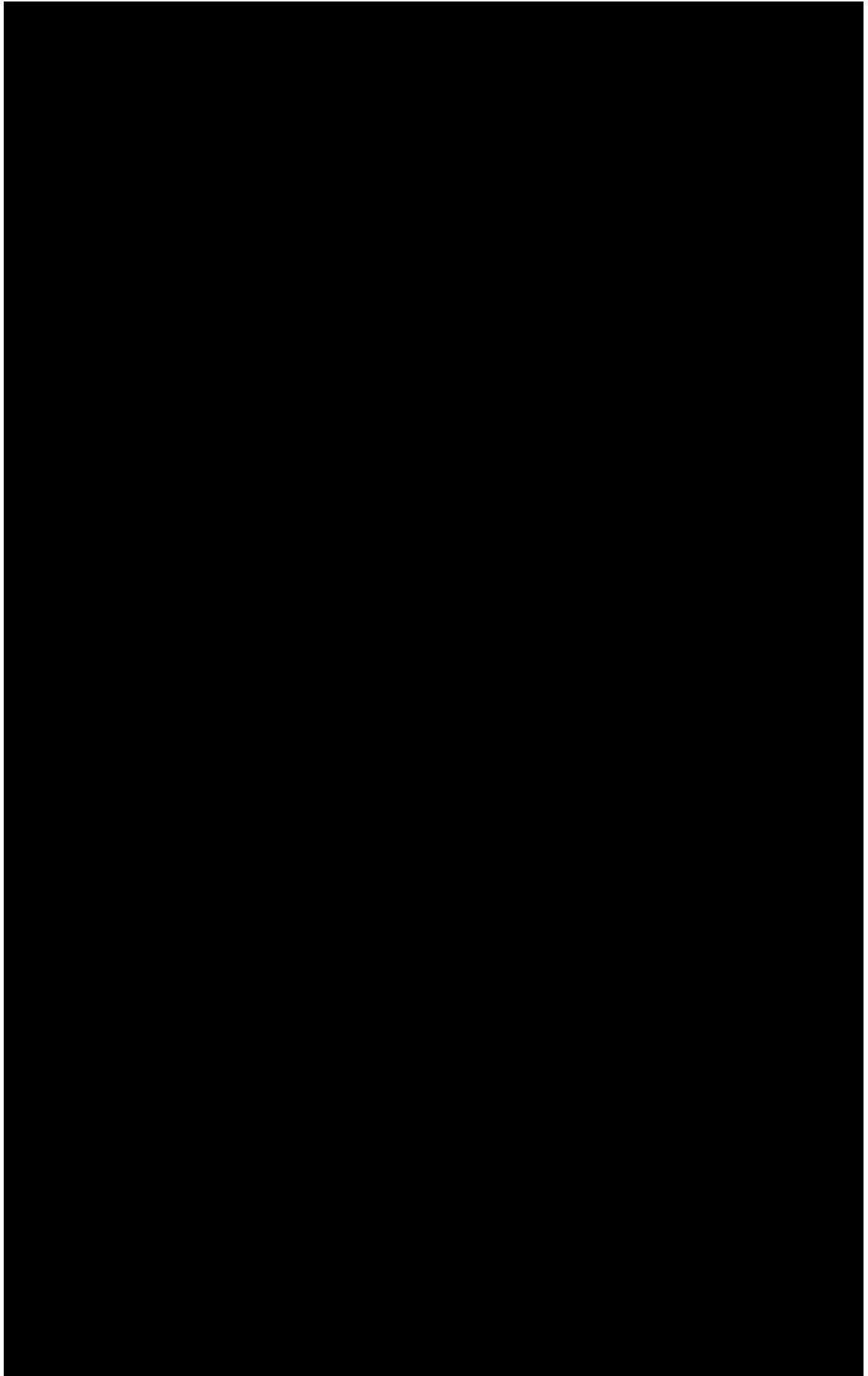
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



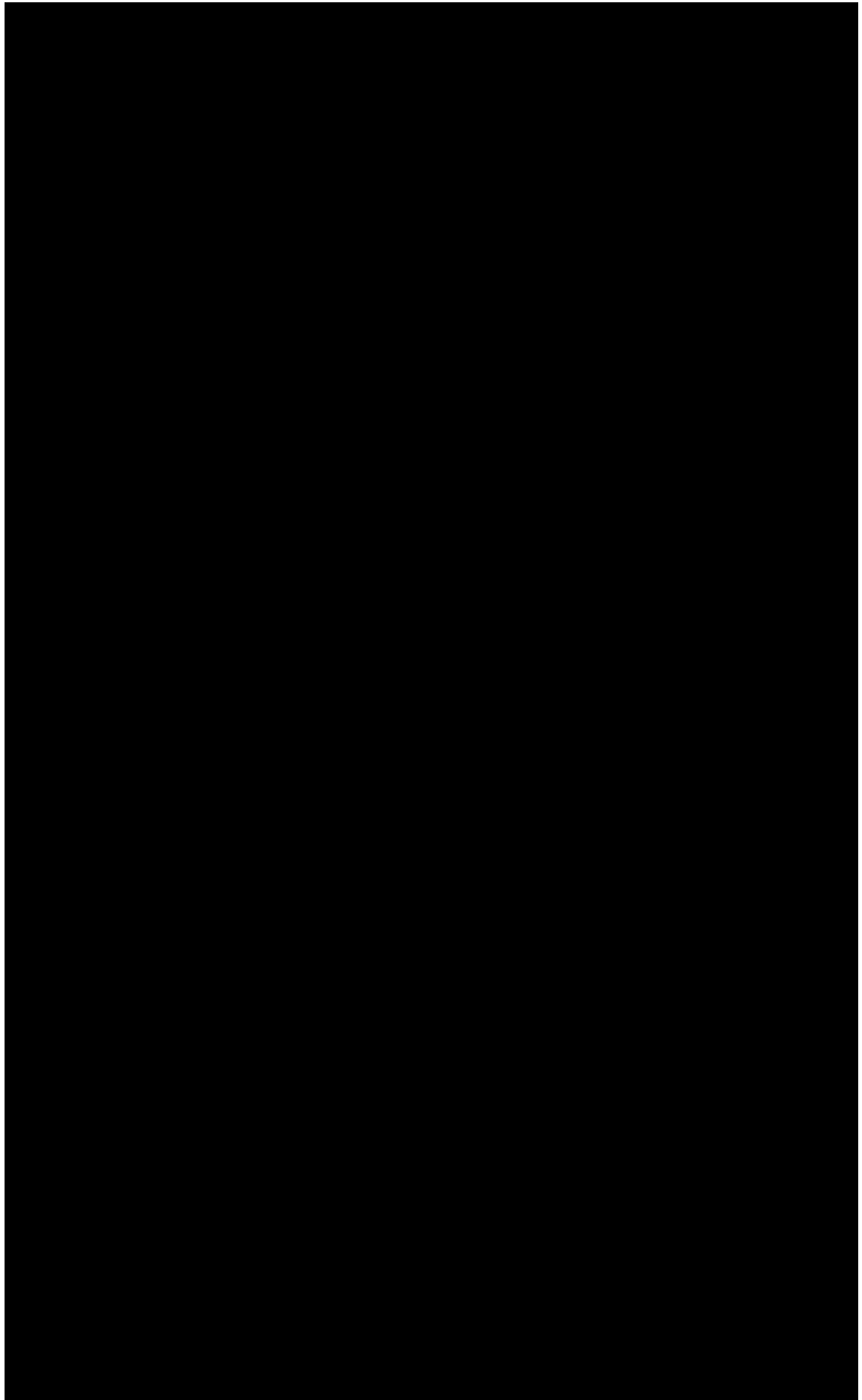
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



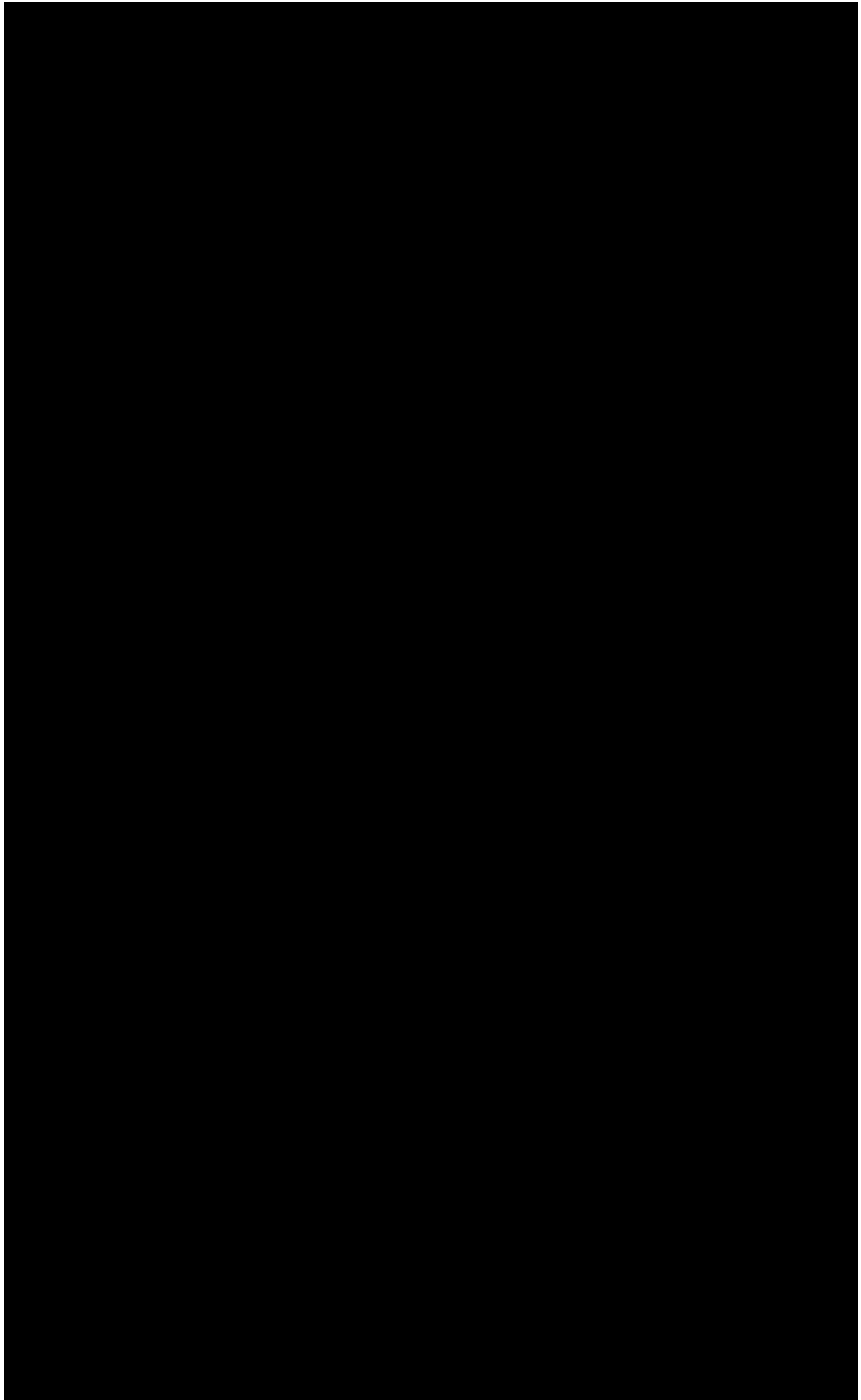
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



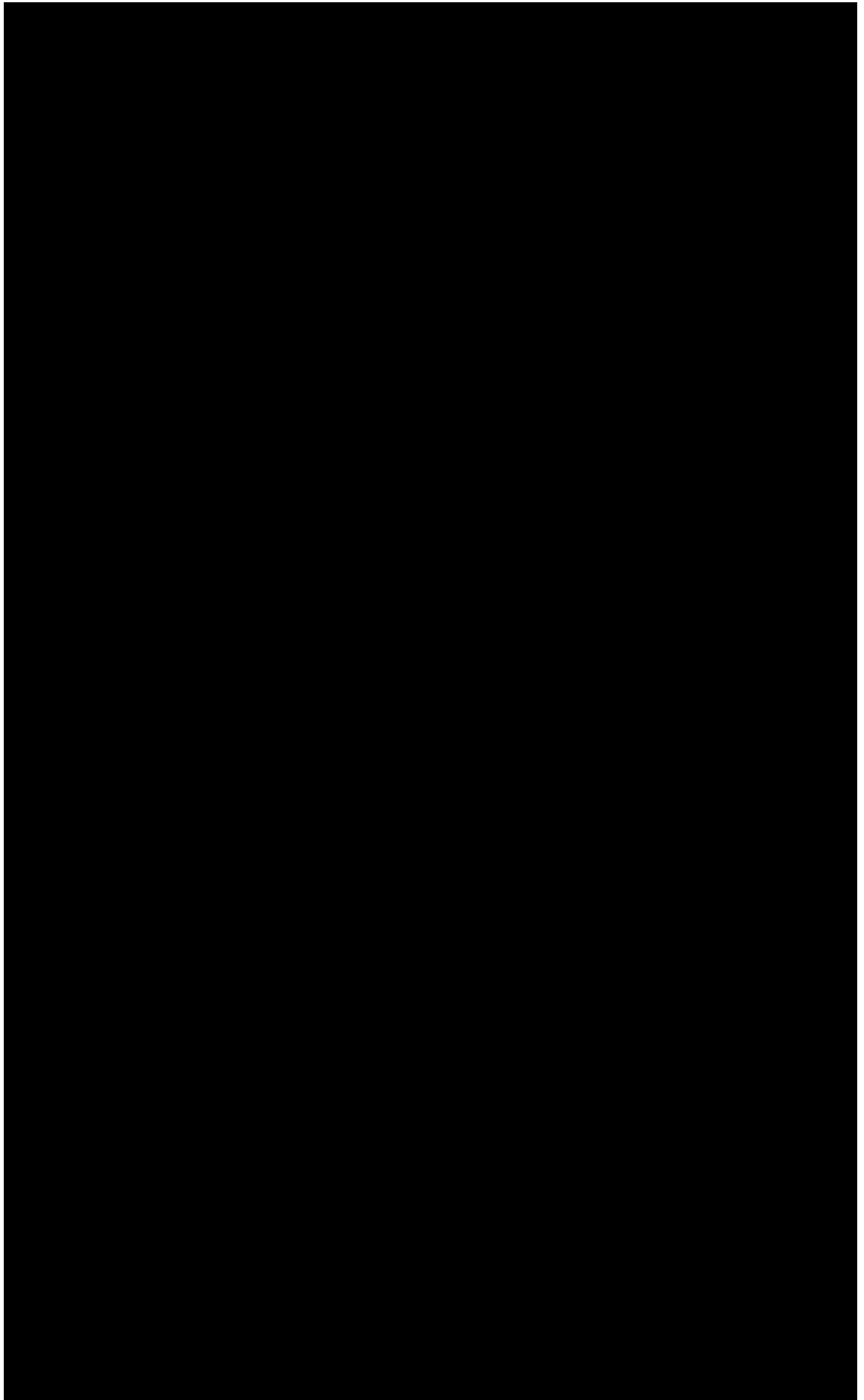
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



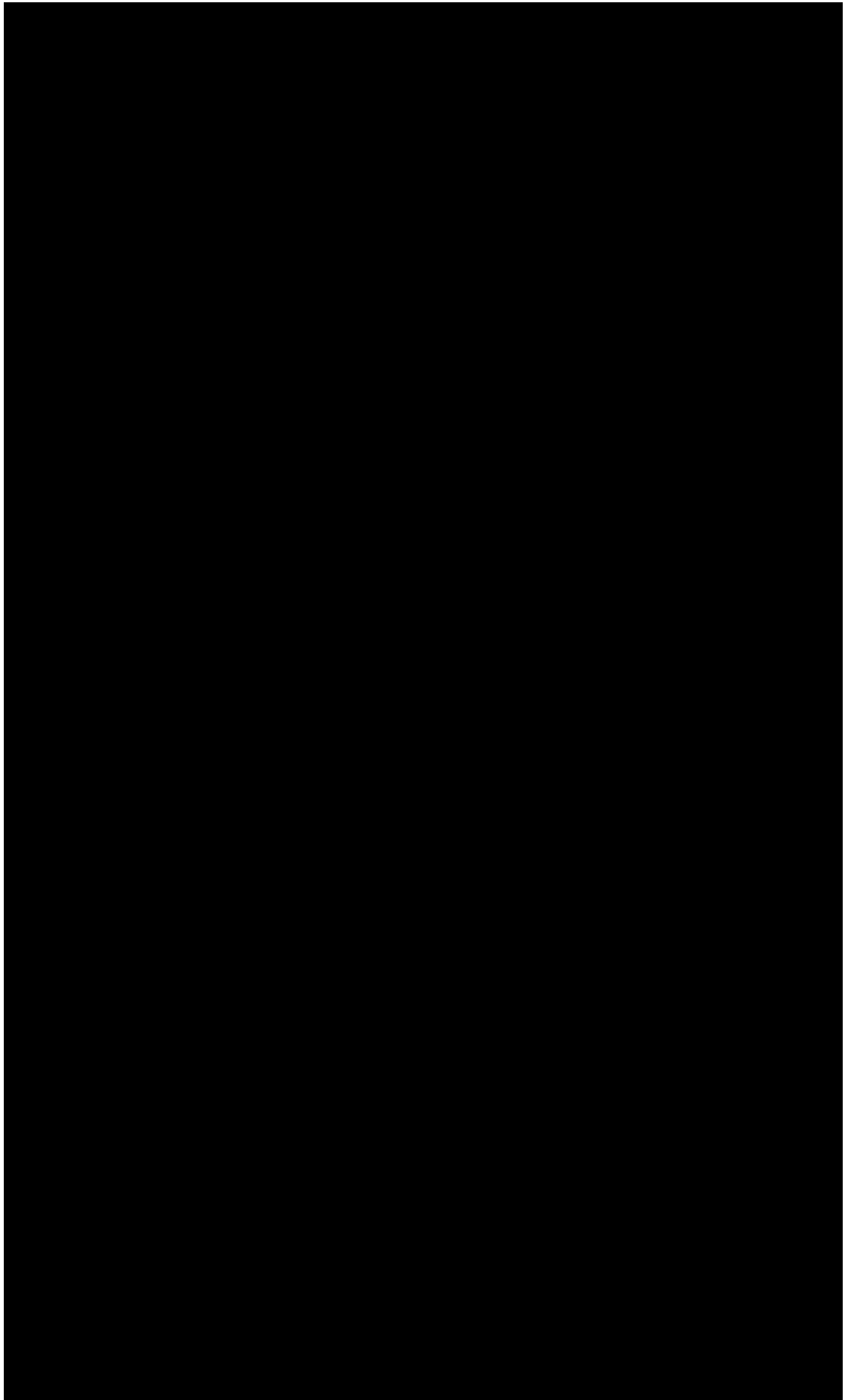
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



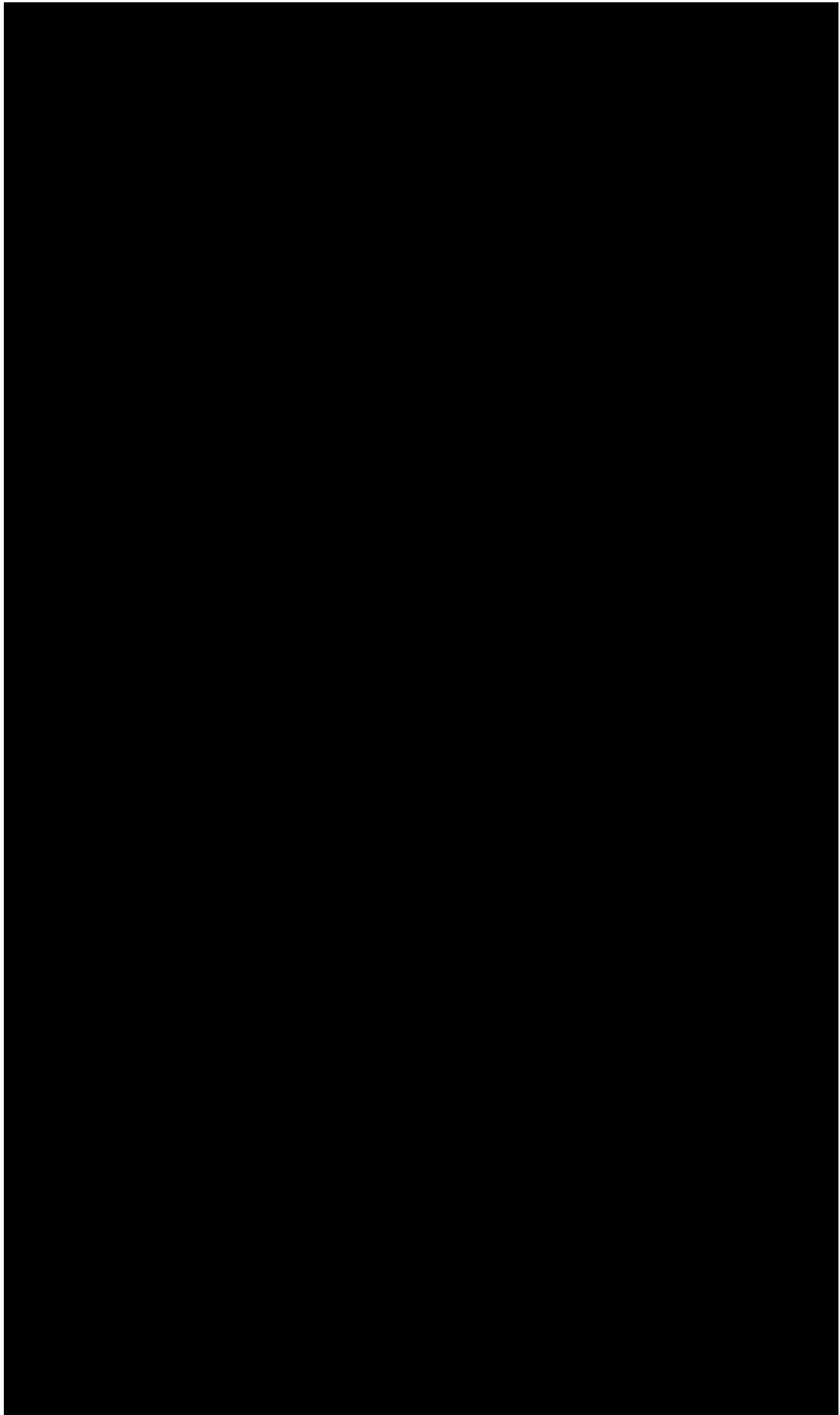
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

17 Q You said beginning -- you got a
18 half-inch report, and only about five total items
19 have historical data. Five on a half-inch thick
20 report. Did that alarm you?

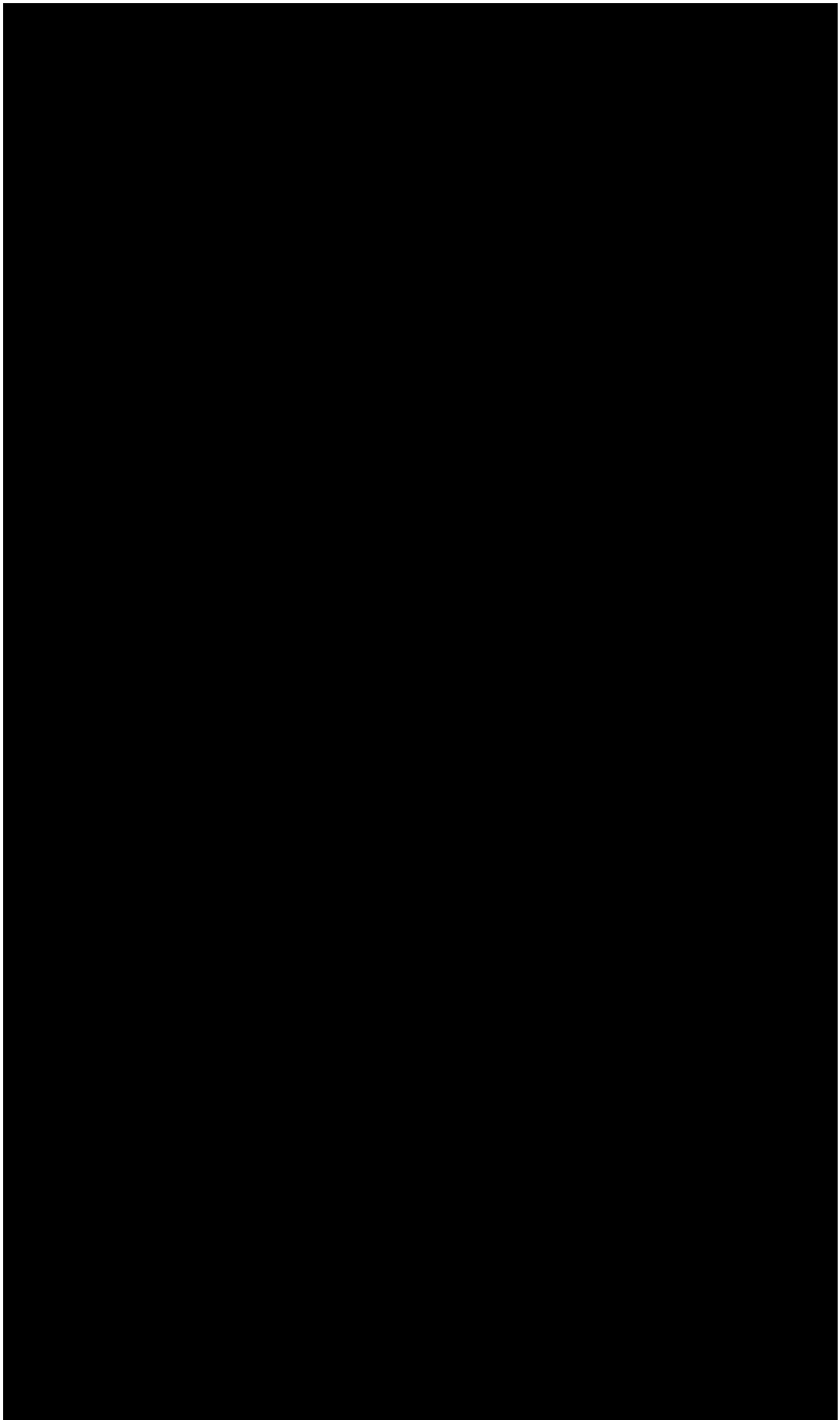
21 A It caused a lot of work for me. I had
22 to go back and review previous IRRs and fill in
23 the blanks.

24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1

2

3

4

5

6

7

8

9 Q And on this report every single -- every
10 single item is missing three to four except for
11 one. Were you alarmed by that?

12 MR. BUSH: Objection.

13 THE WITNESS: I was alarmed about how
14 much work needed to be done to get the data.

15 BY MR. KENNEDY:

16 Q Well, you were alarmed enough to fill
17 out a report to say, "CVS is noncompliant with DEA
18 expectations at this point." True, sir?

19 MR. BUSH: Objection.

20 BY MR. KENNEDY:

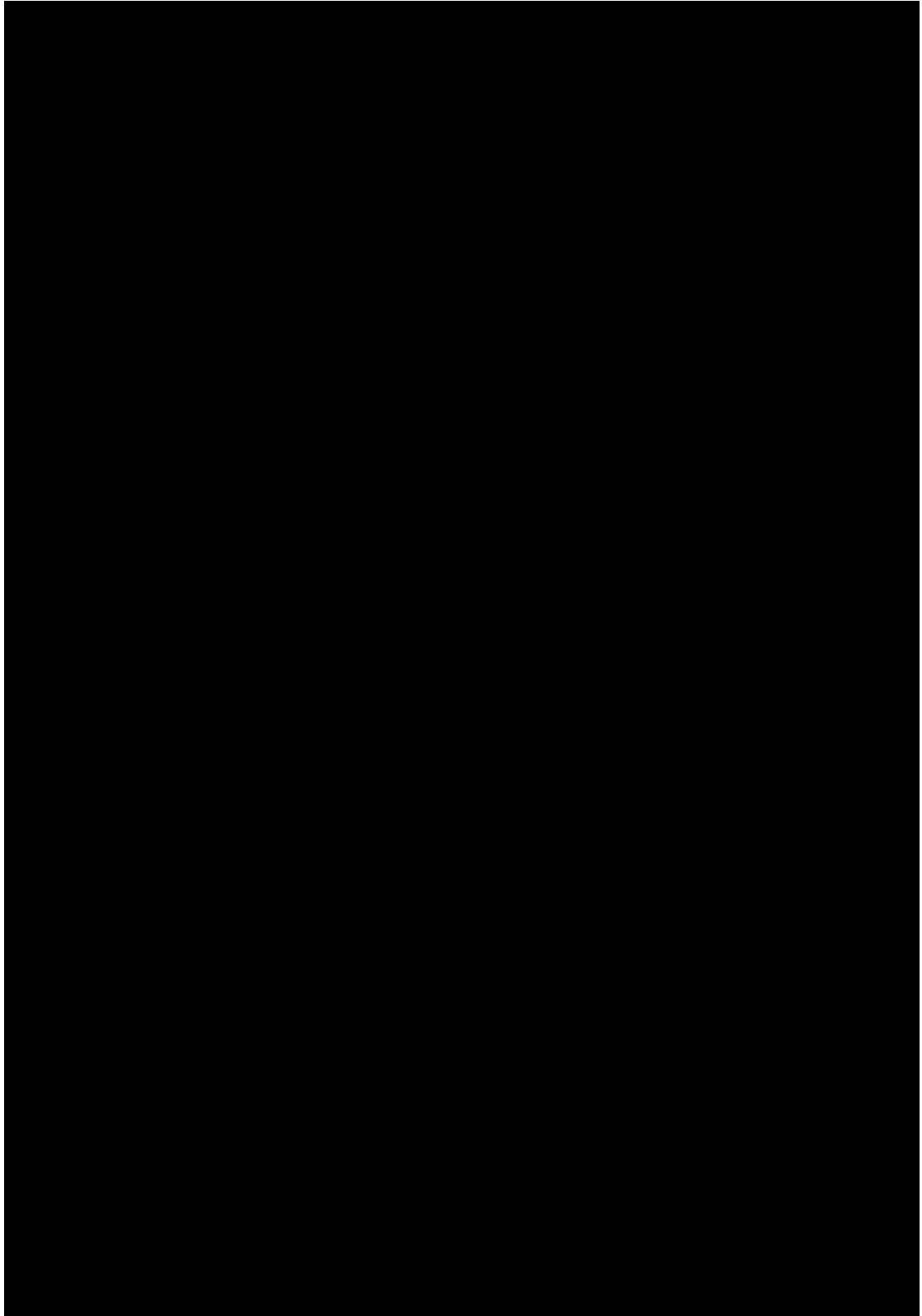
21 Q What's based upon what we're reading
22 here, correct?

23 MR. BUSH: Objection.

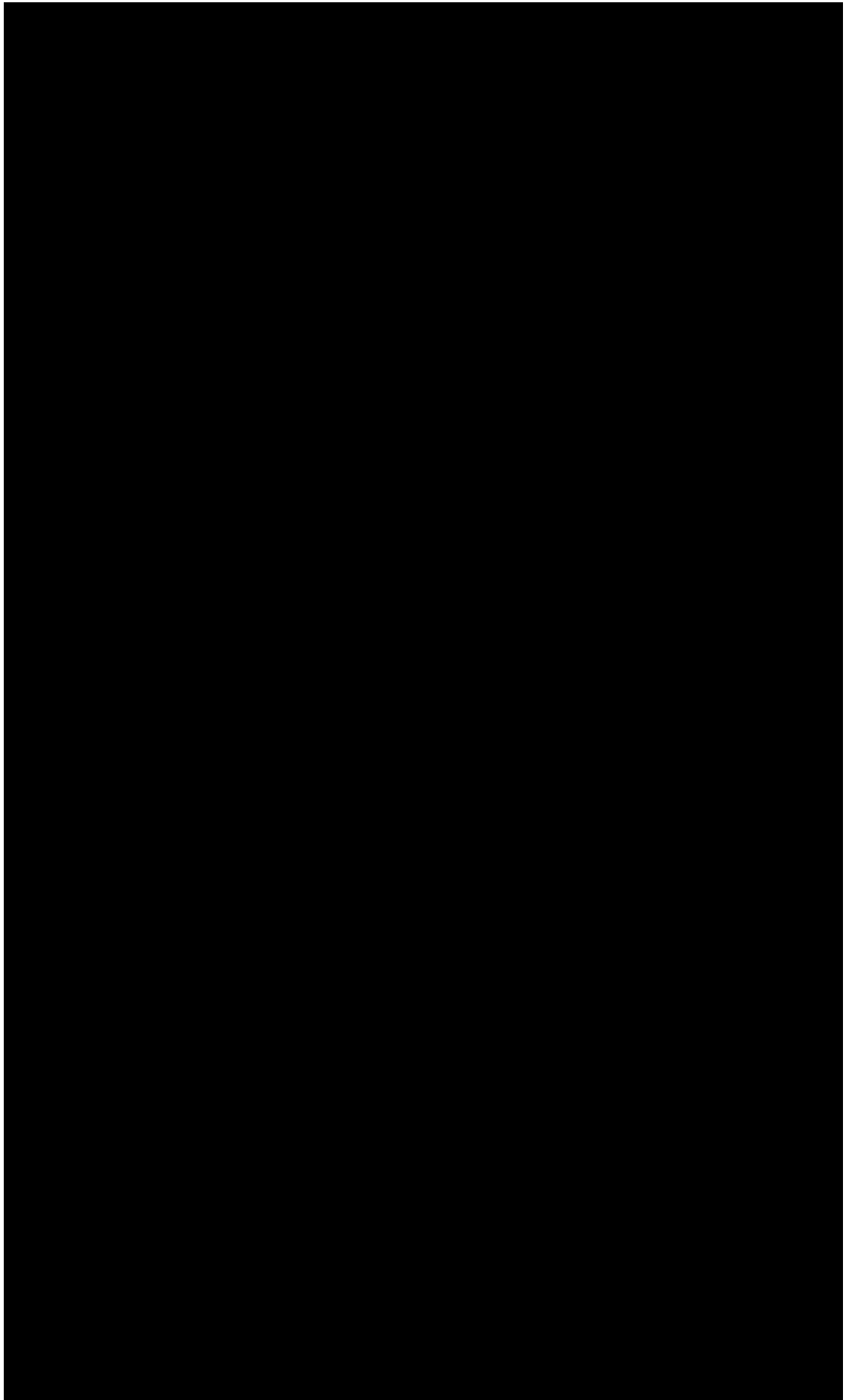
24 THE WITNESS: That's -- that's -- yes, I

1 wrote it like that, like I said, because I had to
2 go back to all previous reports and manually fill
3 in all the data to do the IRR.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1 myself to get friendly with Gary Misiaszek, hoping
2 he would push my -- my request through so I could
3 get all the data put back onto the IRR and ease
4 some of the workload I had.

5 Q What was your common sense approach?

6 A There was no common sense approach. I
7 was trying to be funny with him, trying to be
8 friendly. I manually took all the historical data
9 from previous IRRs and filled in the blanks for
10 all the historical data.

11 Q You were trying to do what a computer
12 and six algorithms were doing, right?

13 A No, I was copying, and I had people
14 helping me.

15 Q And what you were trying to do was fill
16 in historical data and do what a computer and six
17 algorithms were doing.

18 A By filling in the historical data?

19 Q Yes.

20 A I guess the printer would have printed
21 it.

22 Q And then what would you do with it when
23 you got it?

24 A Review it.

1 Q And what would you do, sir, when you
2 would review it? What algorithms or mathematical
3 formulas were you applying that the algorithm had
4 previously been providing?

5 MR. BUSH: Objection.

6 THE WITNESS: Oh, okay. Actually -- I
7 took the data from previous LAGs, filled it in,
8 and erred on the side of caution. If -- if they
9 were over the trend, I just automatically
10 forwarded them out for investigation. I froze
11 them.

12 BY MR. KENNEDY:

13 Q The trending, before you did this with
14 common sense, was being done by the algorithms,
15 correct?

16 MR. BUSH: Objection.

17 THE WITNESS: But I -- I had that
18 information. It was printed on previous IRRs.
19 Yes.

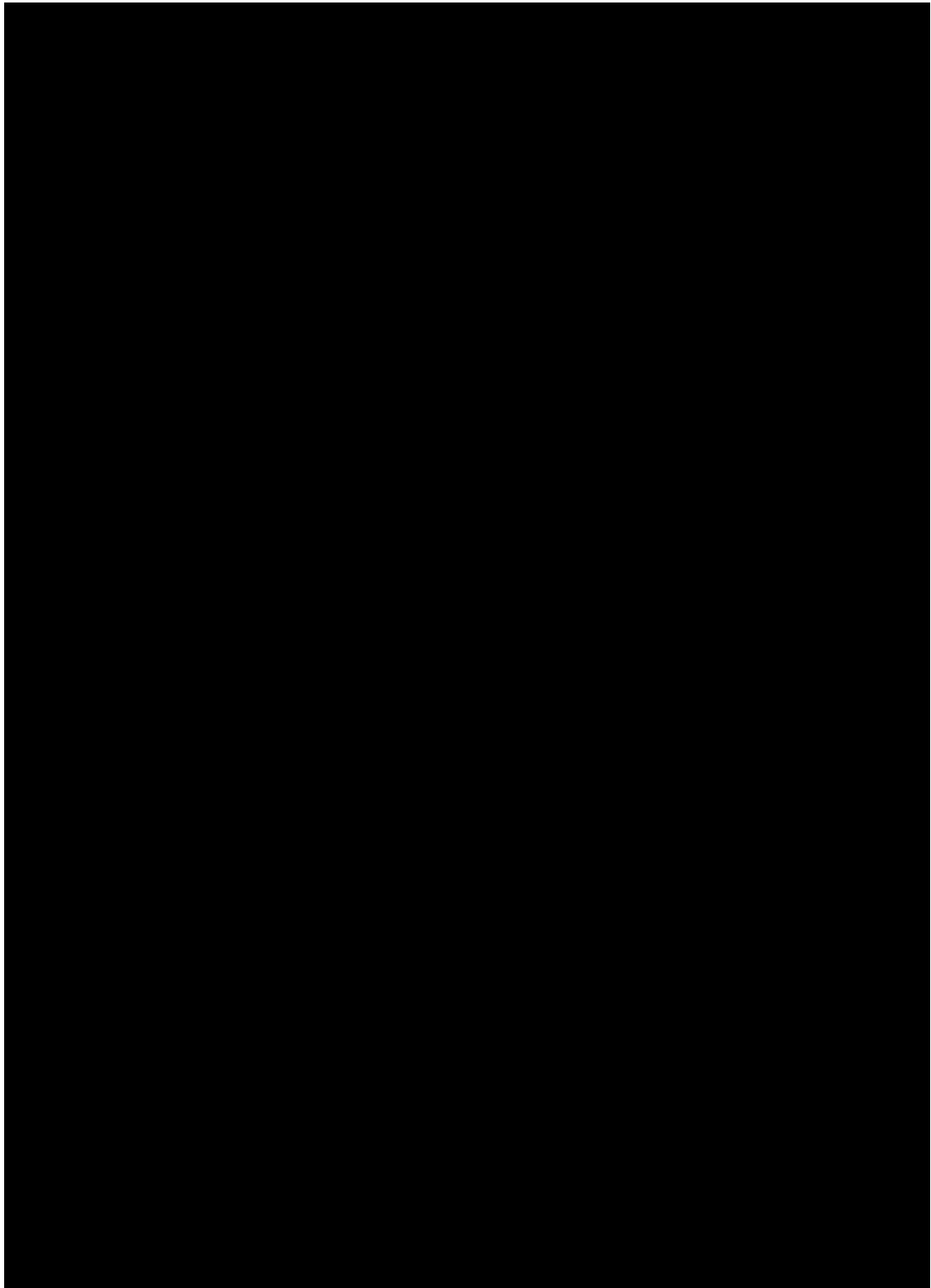
20 (Exhibit No. 24 was premarked for
21 identification.)

22 BY MR. KENNEDY:

23 Q Let's go to Exhibit 24.

24 Start this one at the top. This is an

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20



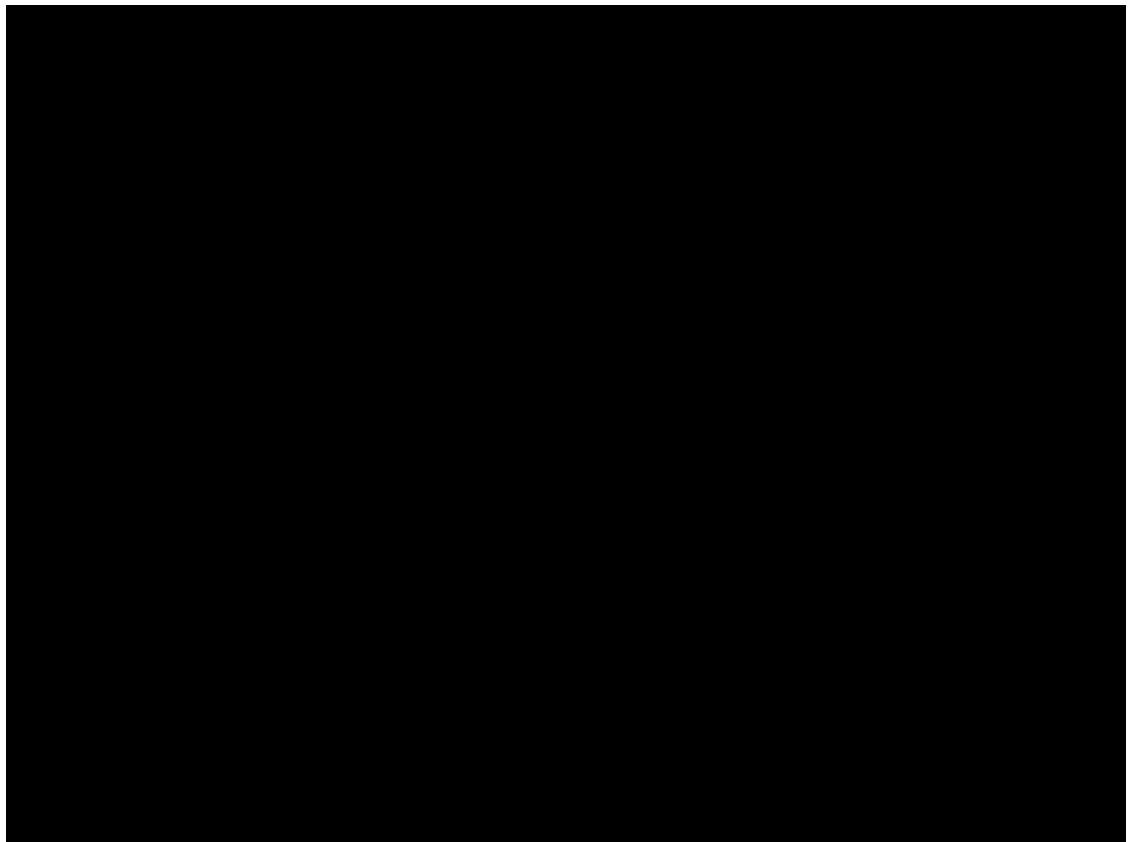
21 Q "You may want to forward it to Dean."
22 Then, "Dean, there is a rewrite we are
23 trying to get approved for the control drug IRR.
24 The current report shows control drugs by item

1 instead of active ingredient (such as PSE). We
2 thought this would be a great idea at the time,
3 but what we found was that the system cannot match
4 historical data to an item if the manufacturer
5 changes the name of the item (Todd can forward you
6 the e-mail). Example: Hydro 5 mg can be changed
7 to hydro mg 5. Same item, just put the 5 in front
8 of the mg. The system cannot match this item
9 because of the change, and therefore loses
10 historical data."

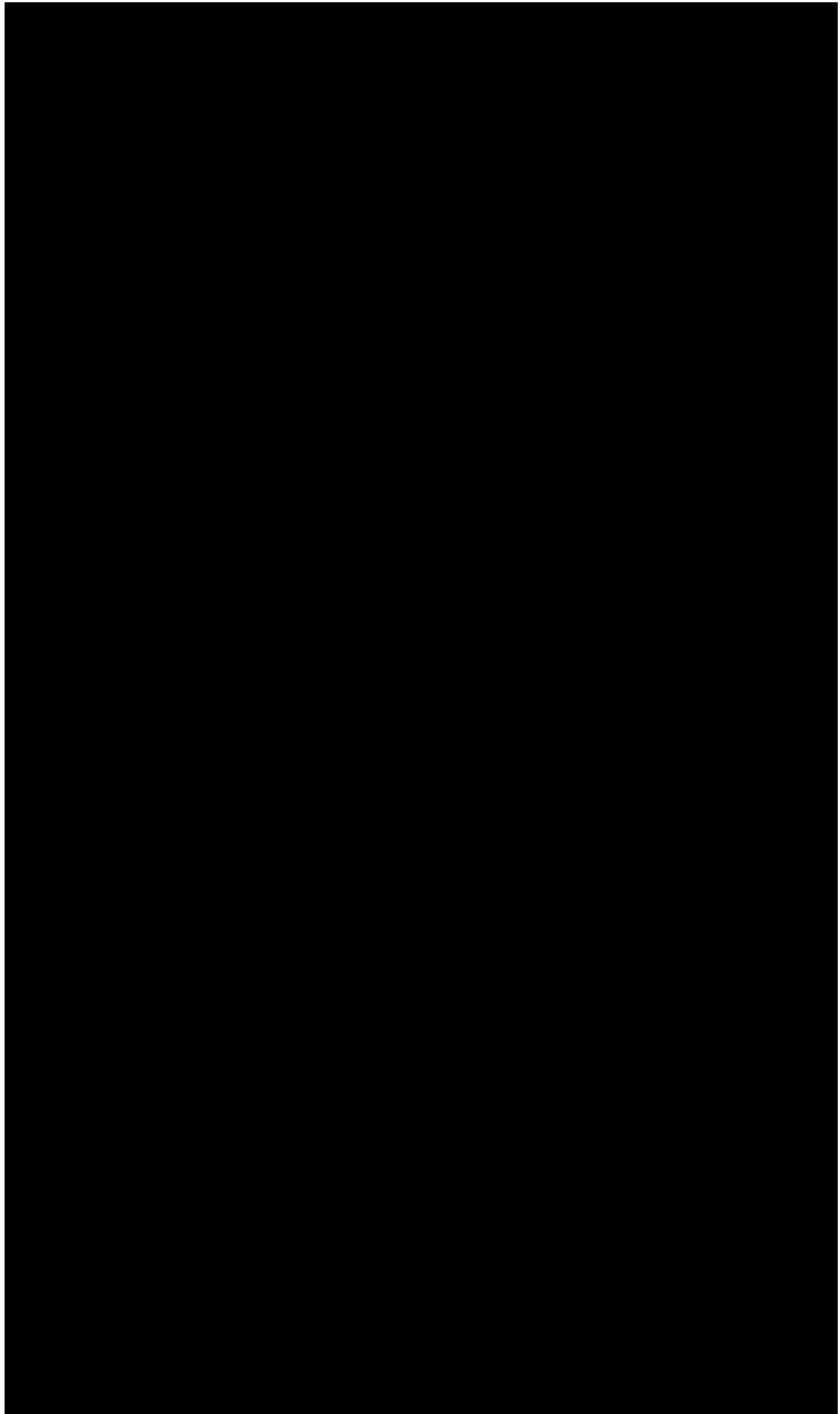
11 Sir, was that simple of a change that
12 would cause you to lose historical data, right?

13 A Yes.

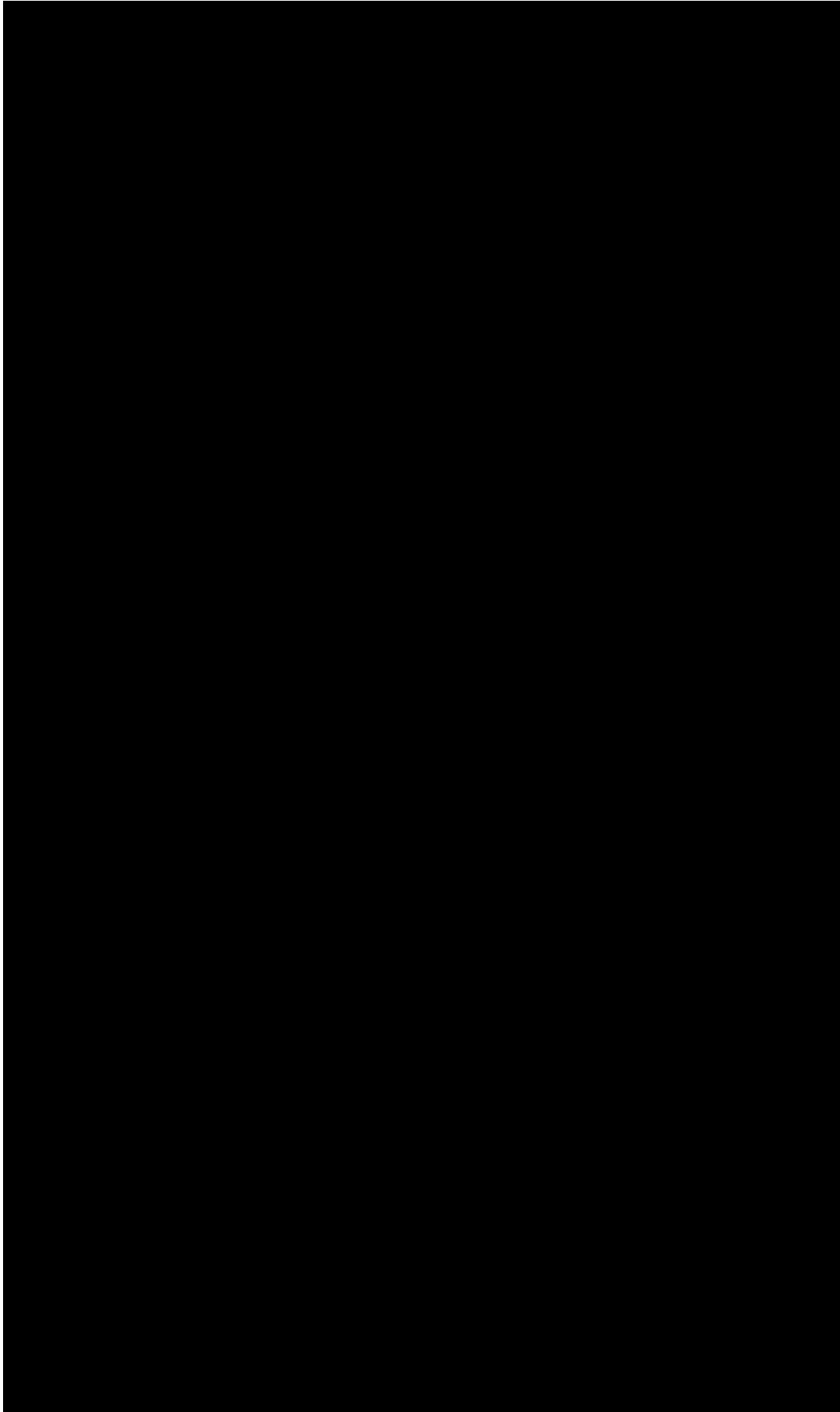
14
15
16
17
18
19
20
21
22
23
24



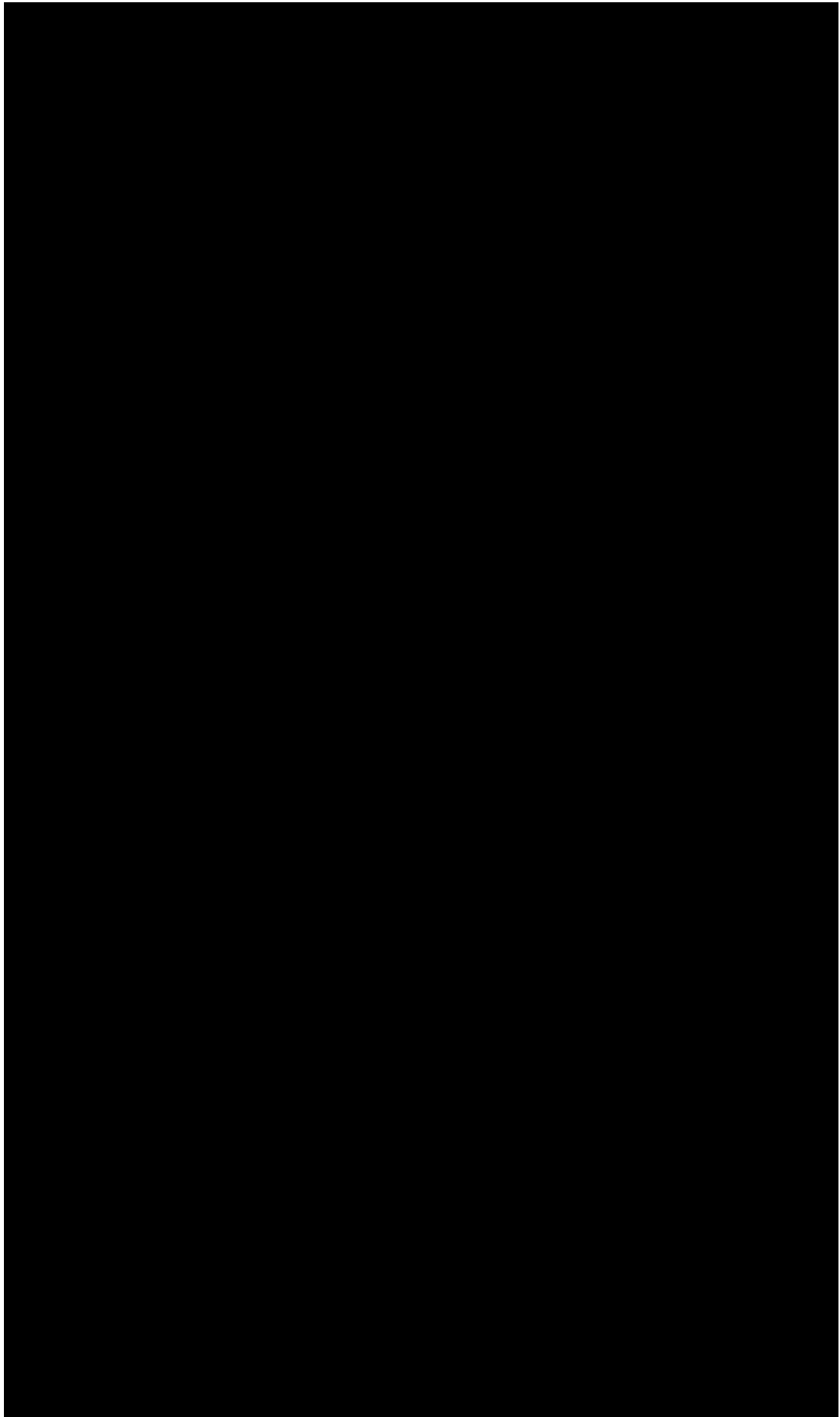
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



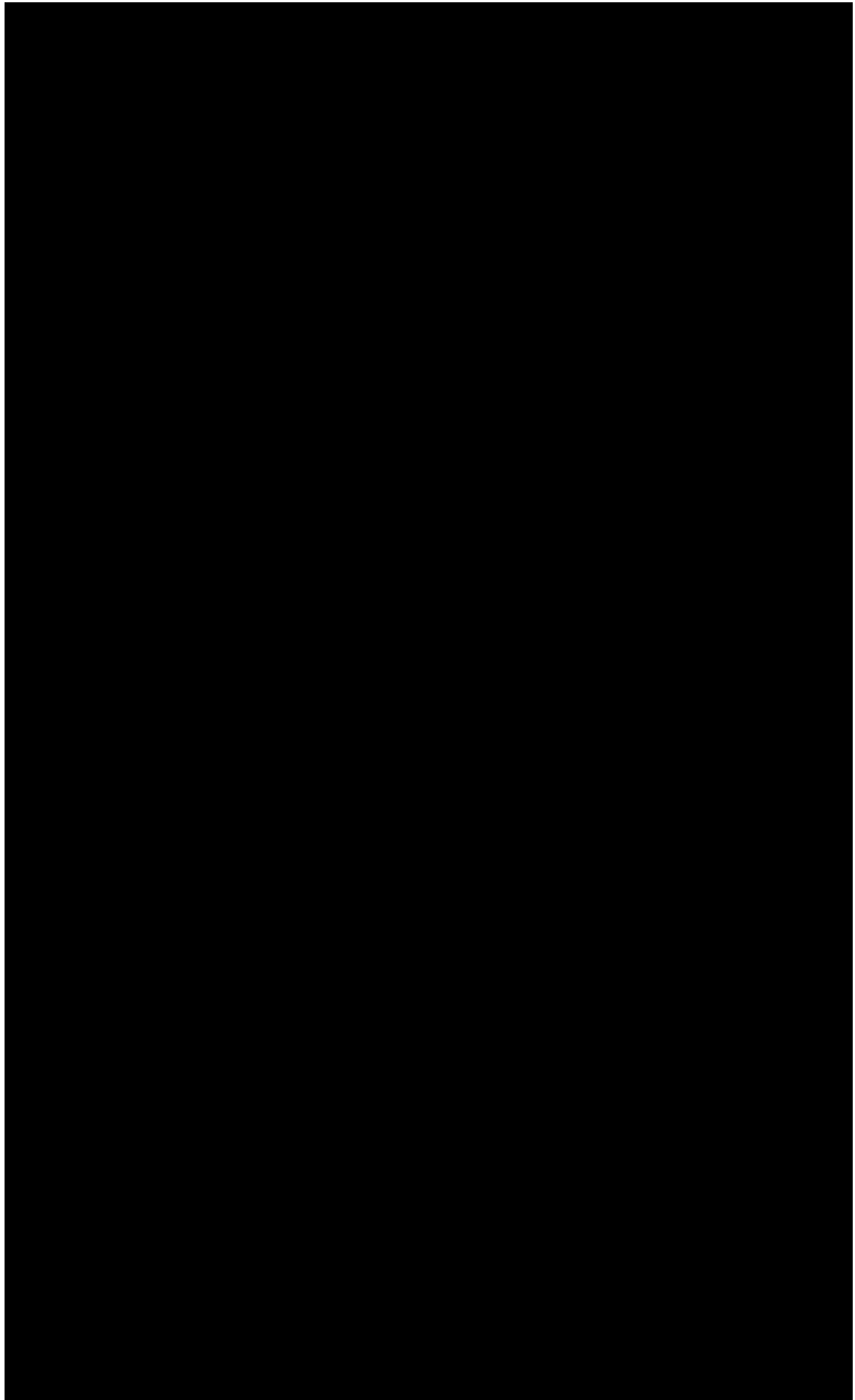
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



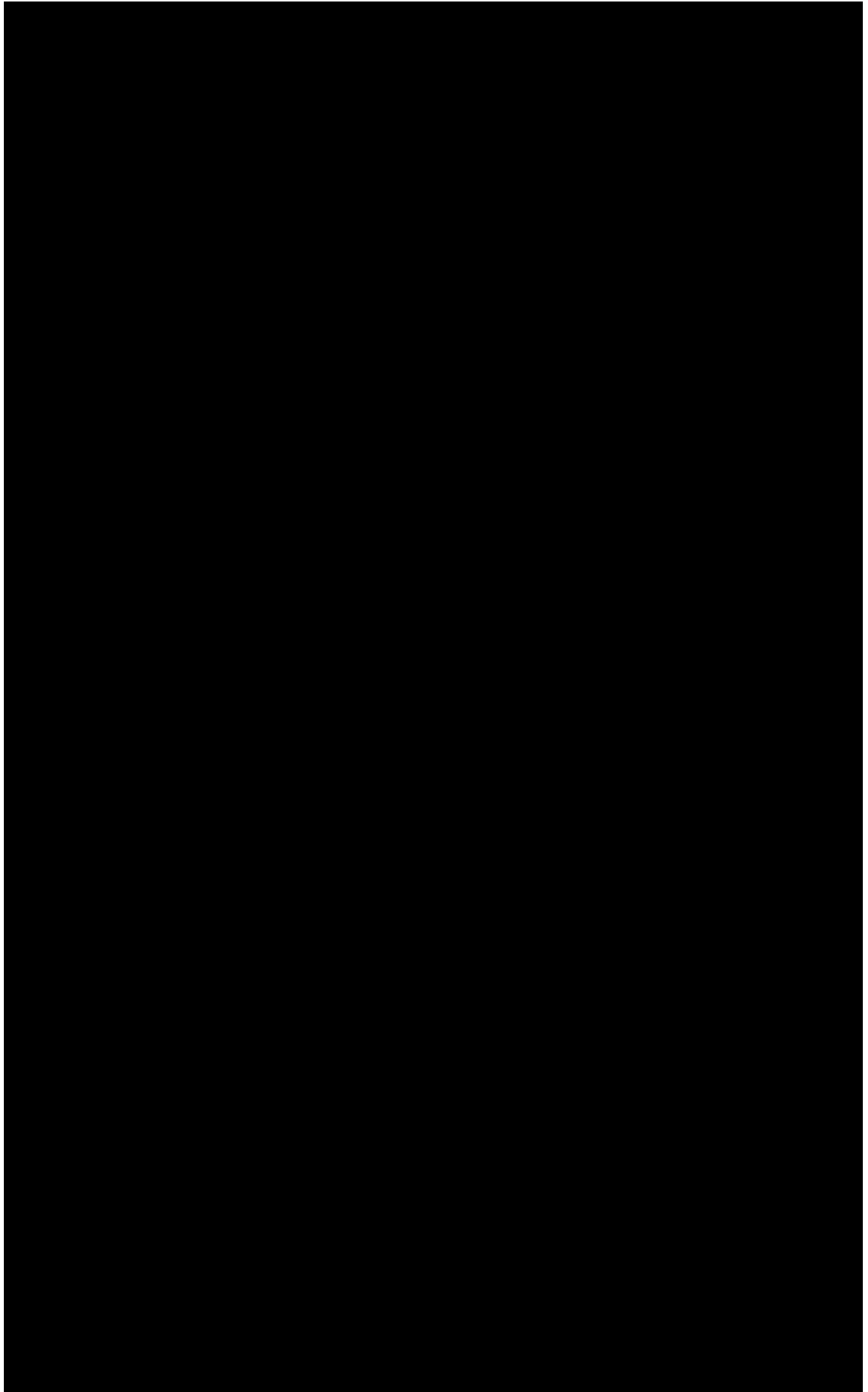
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1

2

3

4

5

6

Q Let's go down to test number 2 run on

7

each order of a controlled substance. Test

8

number 2 of this computer algorithm says "Gives

9

the number of standard deviations the current

10

monthly total lies from the projected monthly

11

total based on historic ordering behavior."

12

And if you're missing four of six months

13

of historical data, whatever test number 2 spits

14

out, that's going to be inaccurate, true?

15

MR. BUSH: Objection.

16

THE WITNESS: It -- it will cause a lot

17

more flags.

18

BY MR. KENNEDY:

19

Q It's going to be inaccurate, true?

20

MR. BUSH: Objection.

21

THE WITNESS: Yes.

22

BY MR. KENNEDY:

23

Q Let's go down to number 4. Test

24

number 4 of each order: "Indicator: Detects for

1 an increasing trend in ordering behavior." If it
2 doesn't have four out of six months for the
3 historical data, it cannot evaluate trends, true?

4 A It would -- it was -- the missing data
5 was coming up as zeros.

6 Q Correct.

7 A Right.

8 Q So it's not going to be able to
9 accurately evaluate with this algorithm or this
10 test trending, true?

11 A It would flag a lot more.

12 Q Yeah, it's not going to be accurate.

13 A No.

14 Q The next test: "Indicator: Determines
15 if the GNC has been ordered for two or more months
16 prior to the current ordering date." If it's got
17 zeroes in LAG 1 and 2 and 3 and 4, it's not going
18 to be able to accurately make that determination,
19 correct?

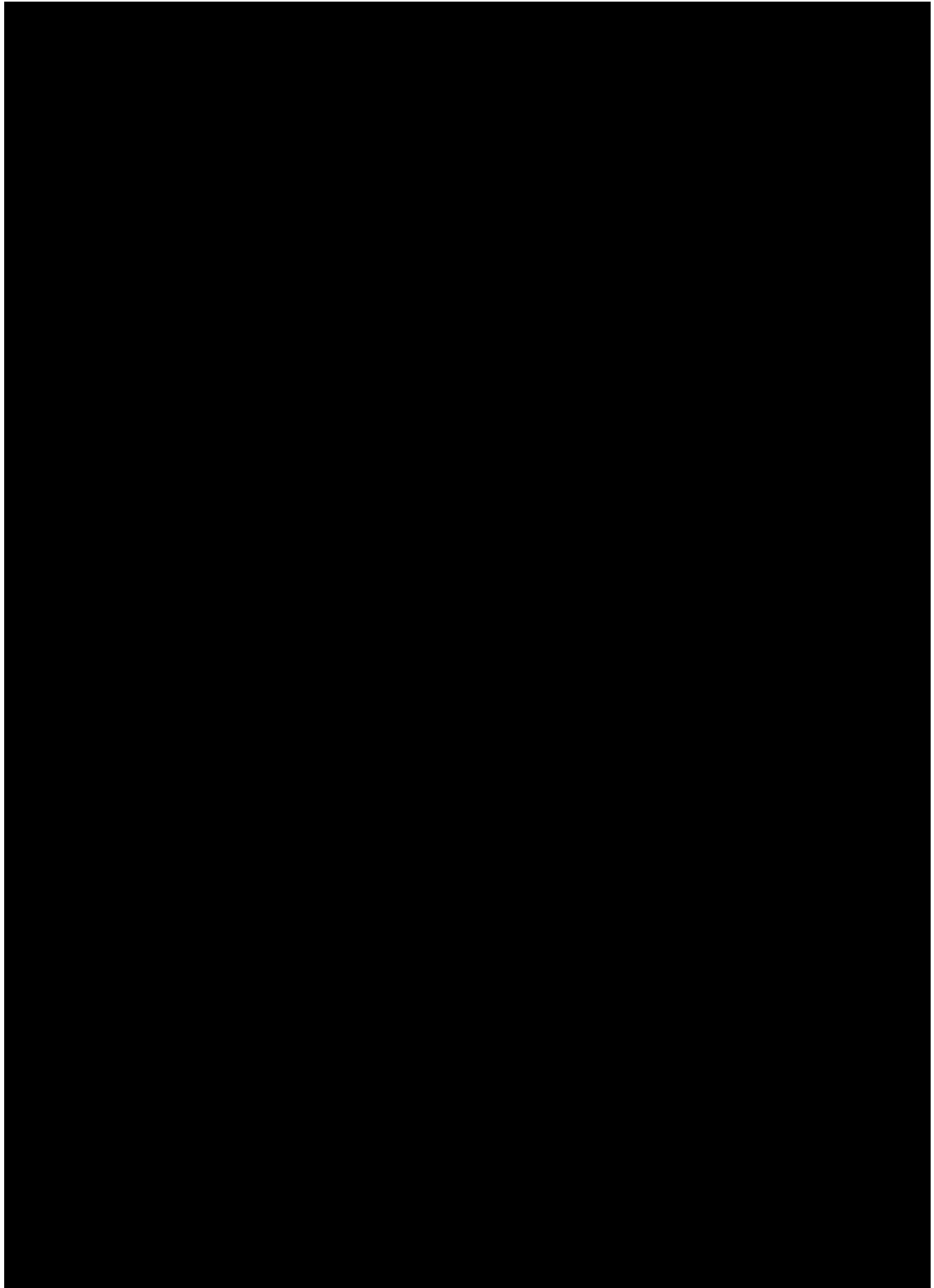
20 A No.

21 Q The next test that it's going to run,
22 this algorithm computer and the IRR determines if
23 the amount ordered for the GNC is less than or
24 equal to the six-month maximum. Well, if it's

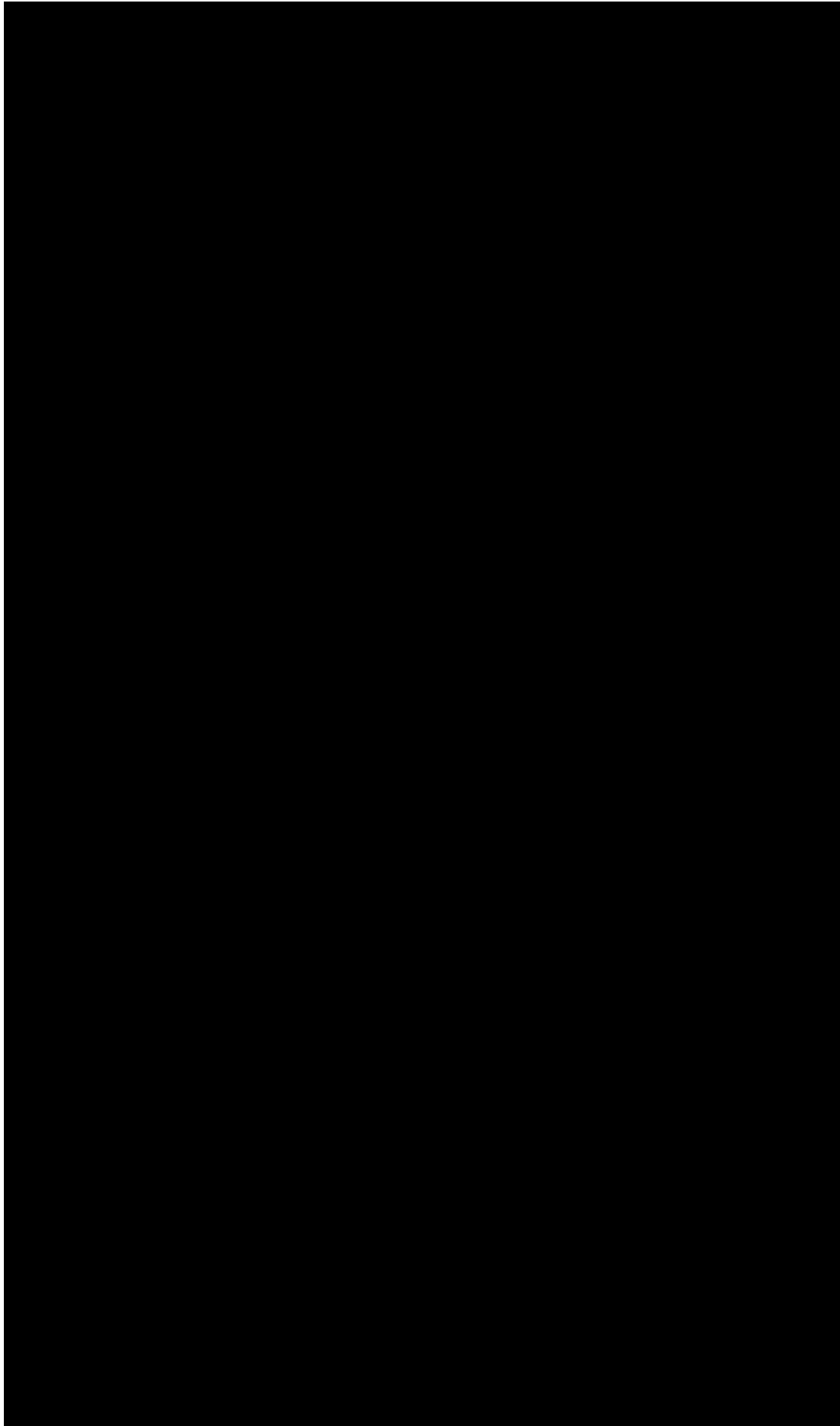
1 missing data, historical data in this six-month
2 period, it's not going to be accurate when running
3 that test either, is it?

4 A No.

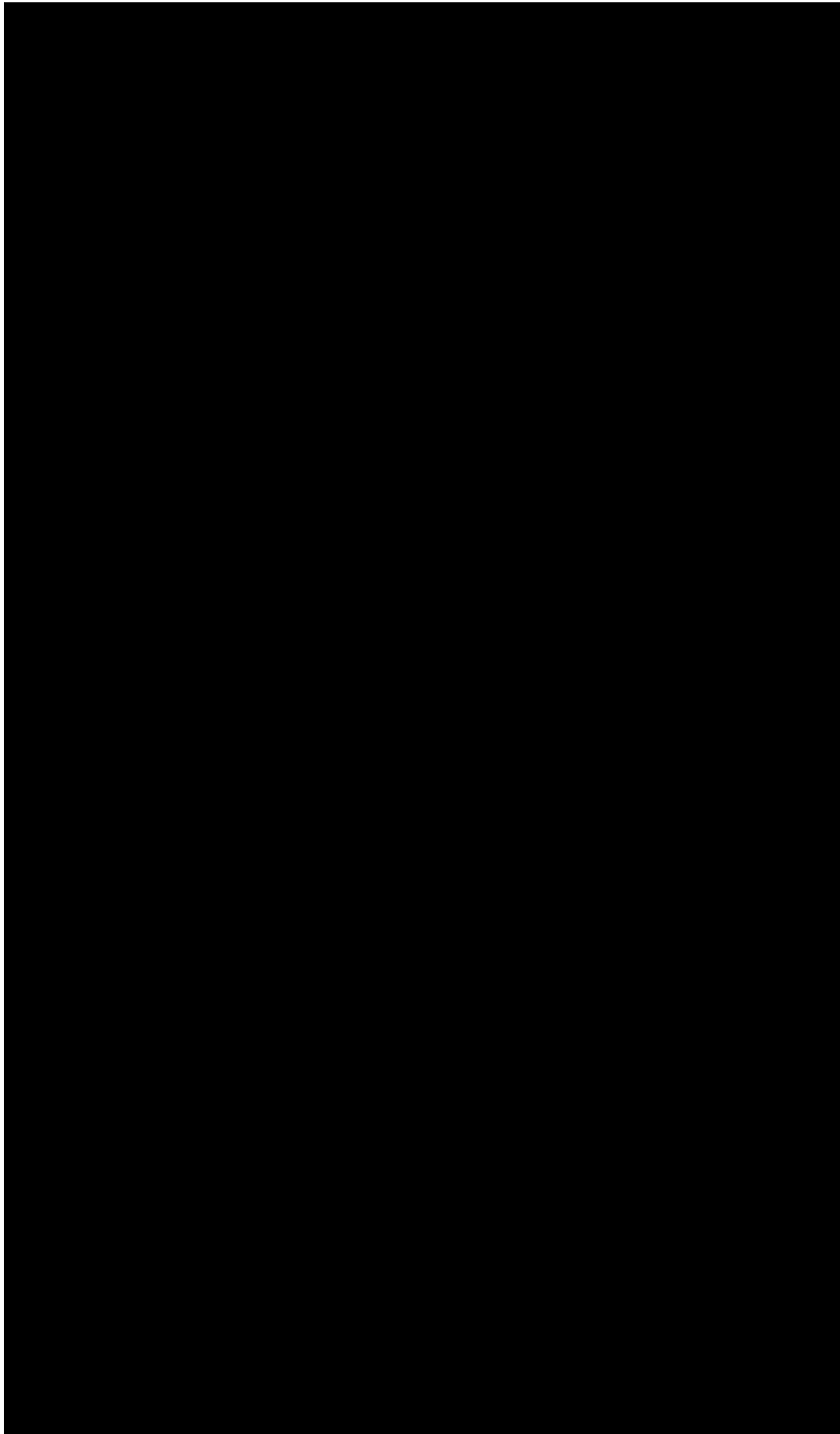
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



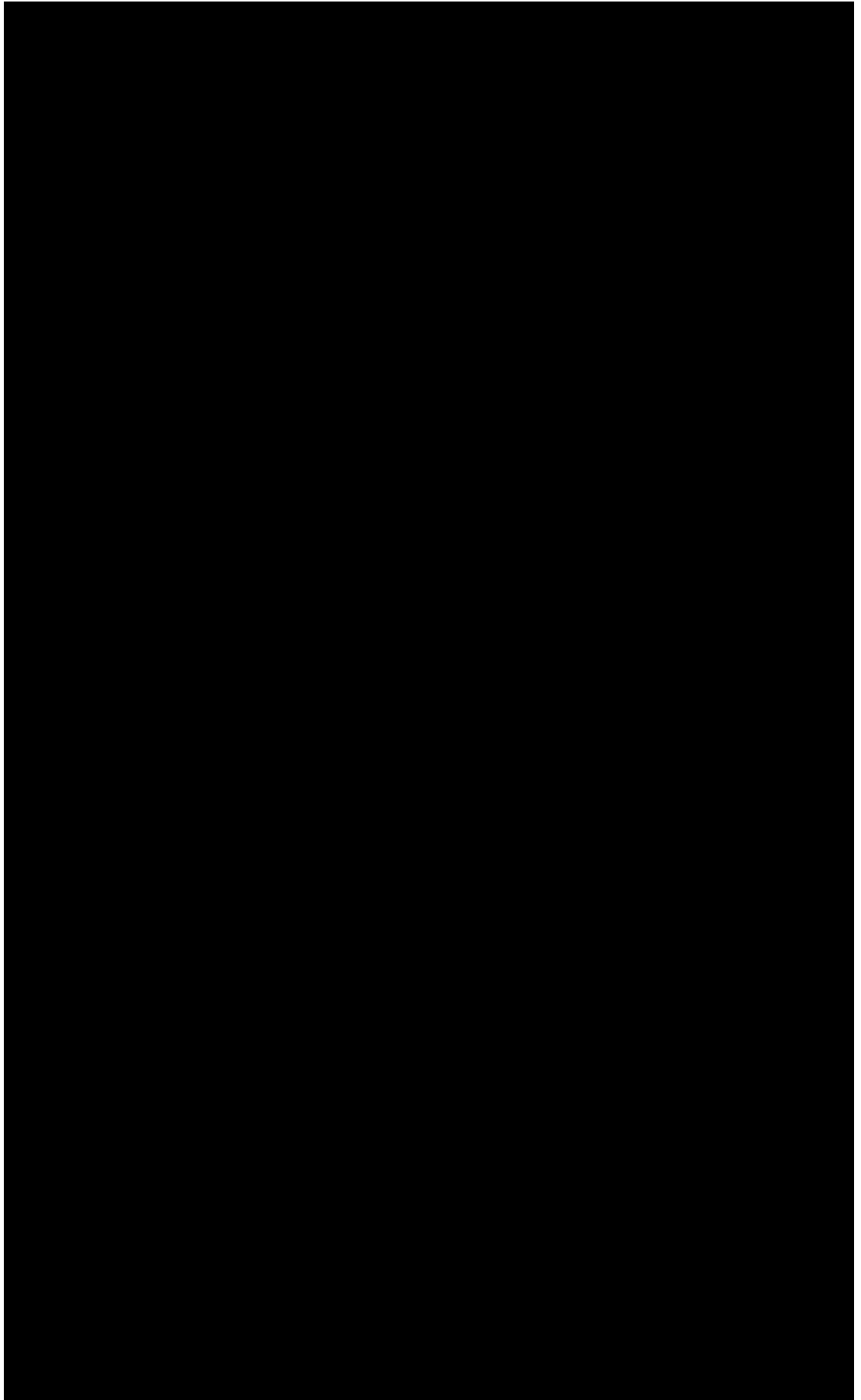
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



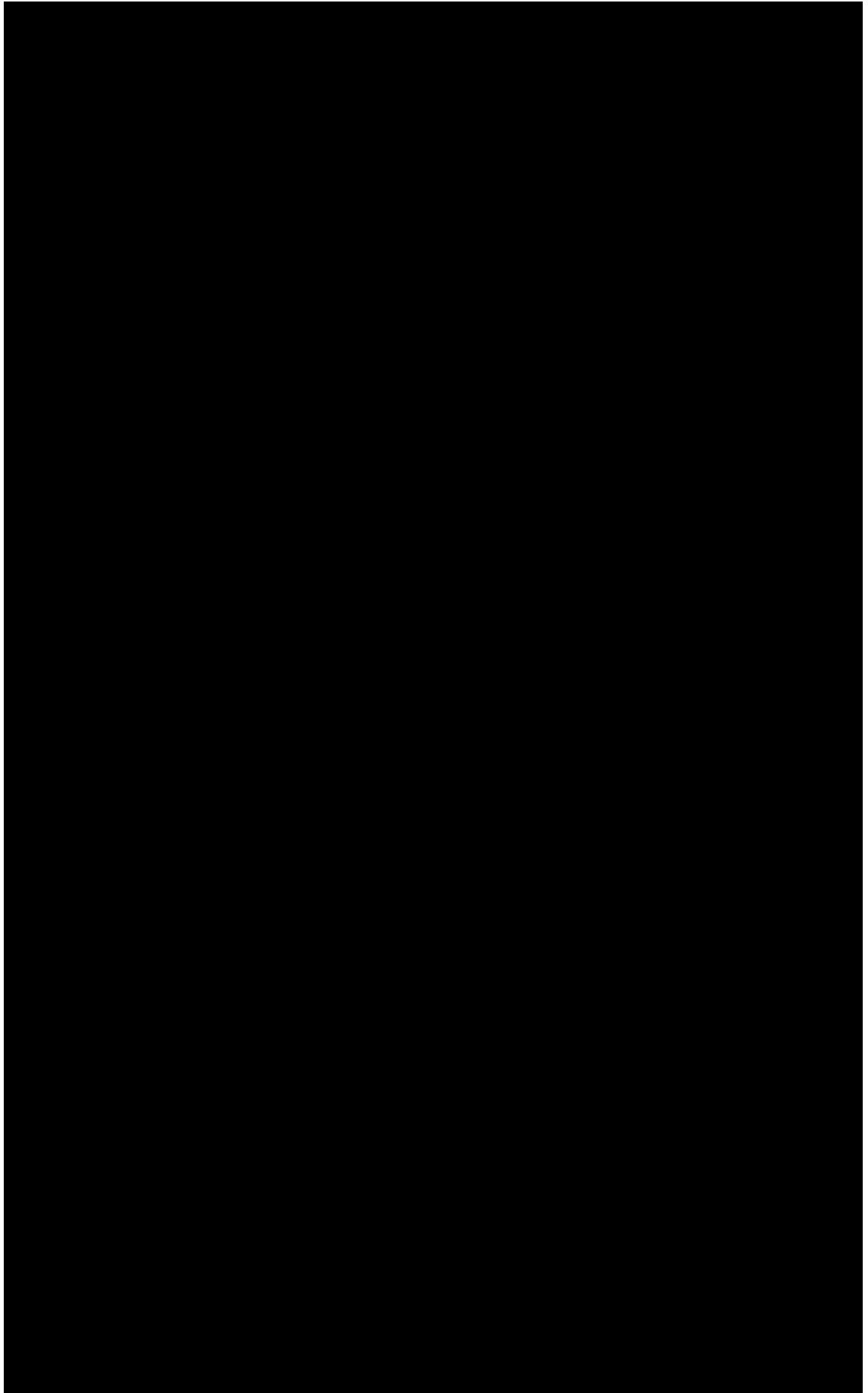
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



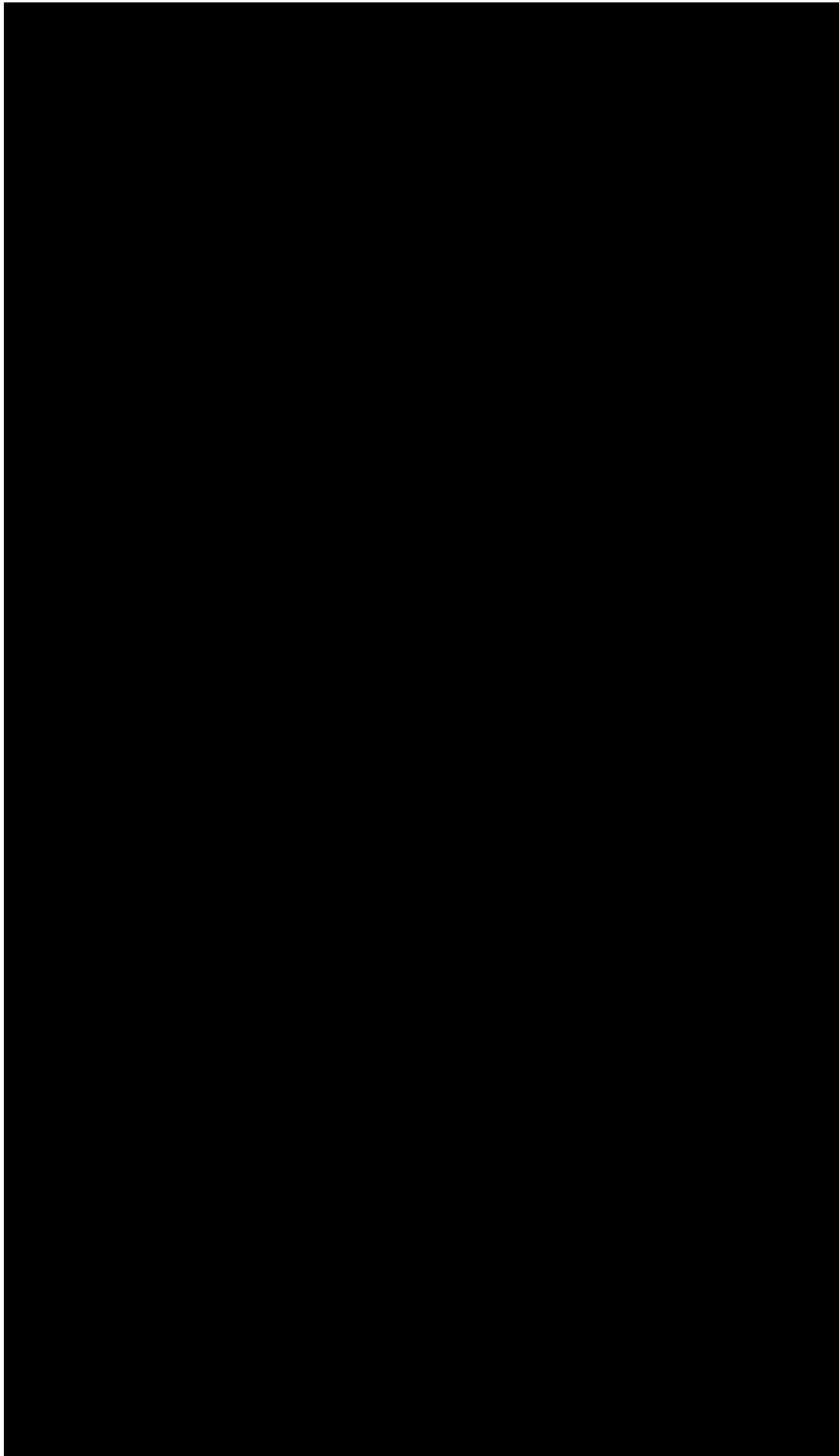
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



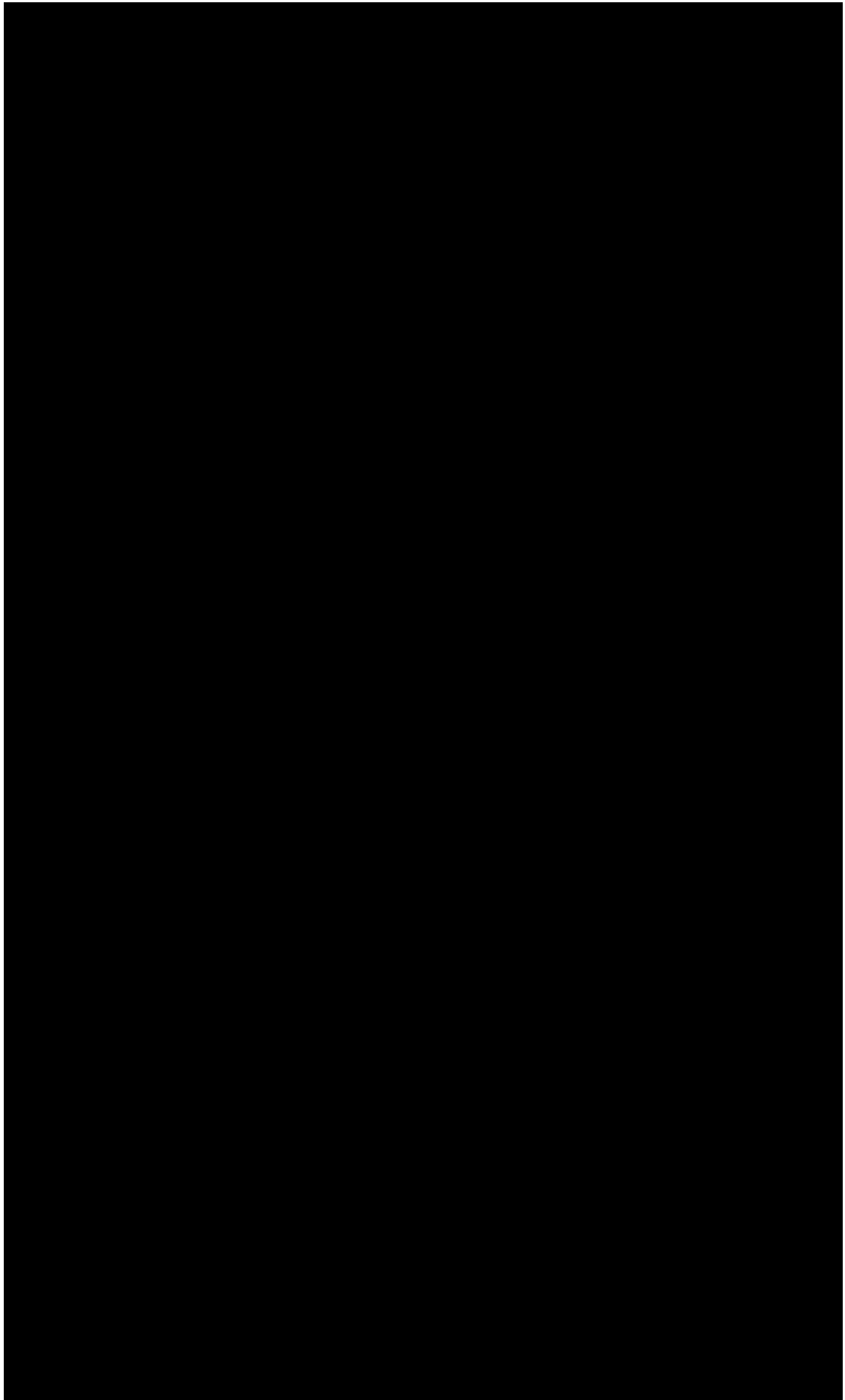
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



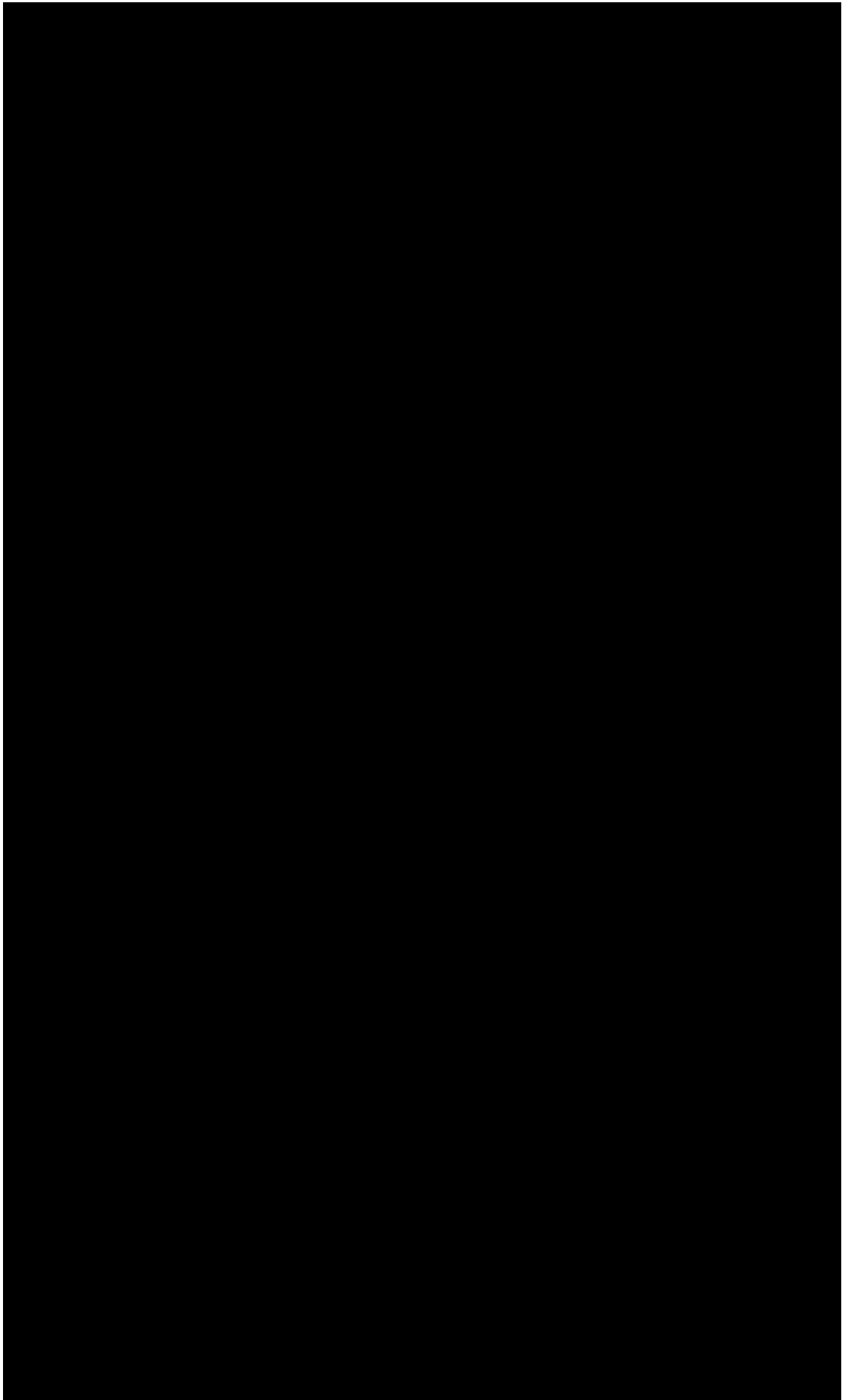
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



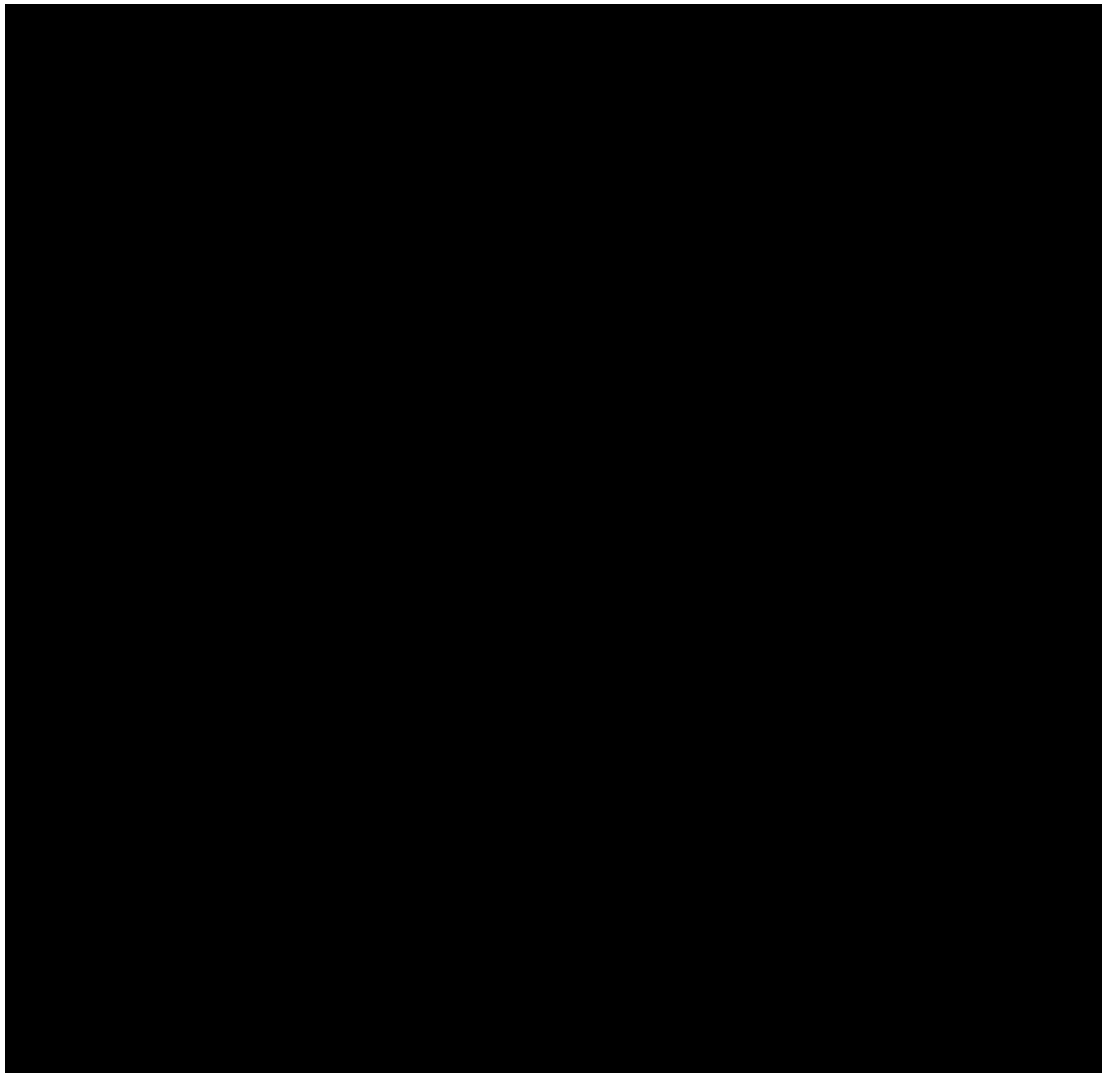
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



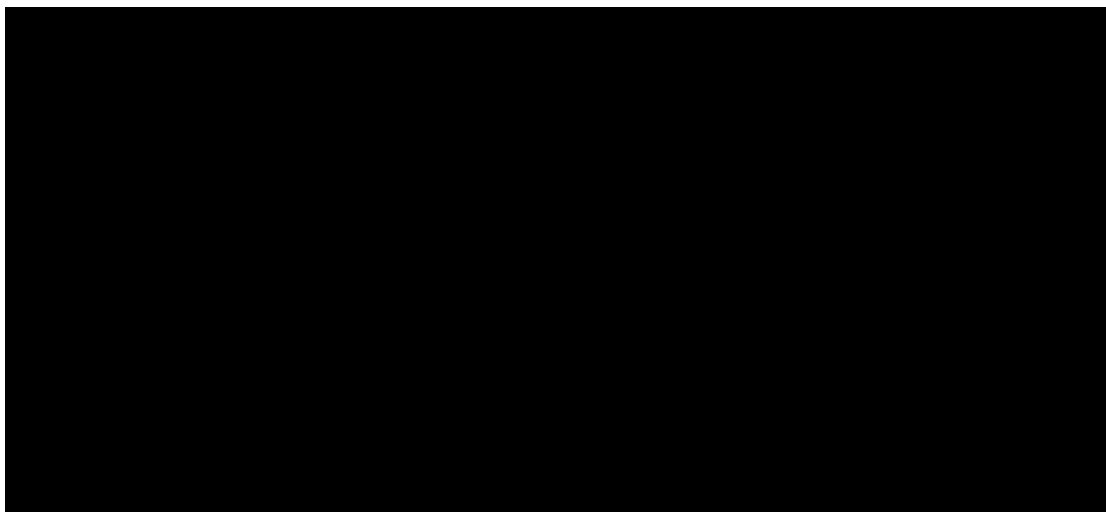
1
2
3
4
5
6
7
8
9
10
11
12
13
14



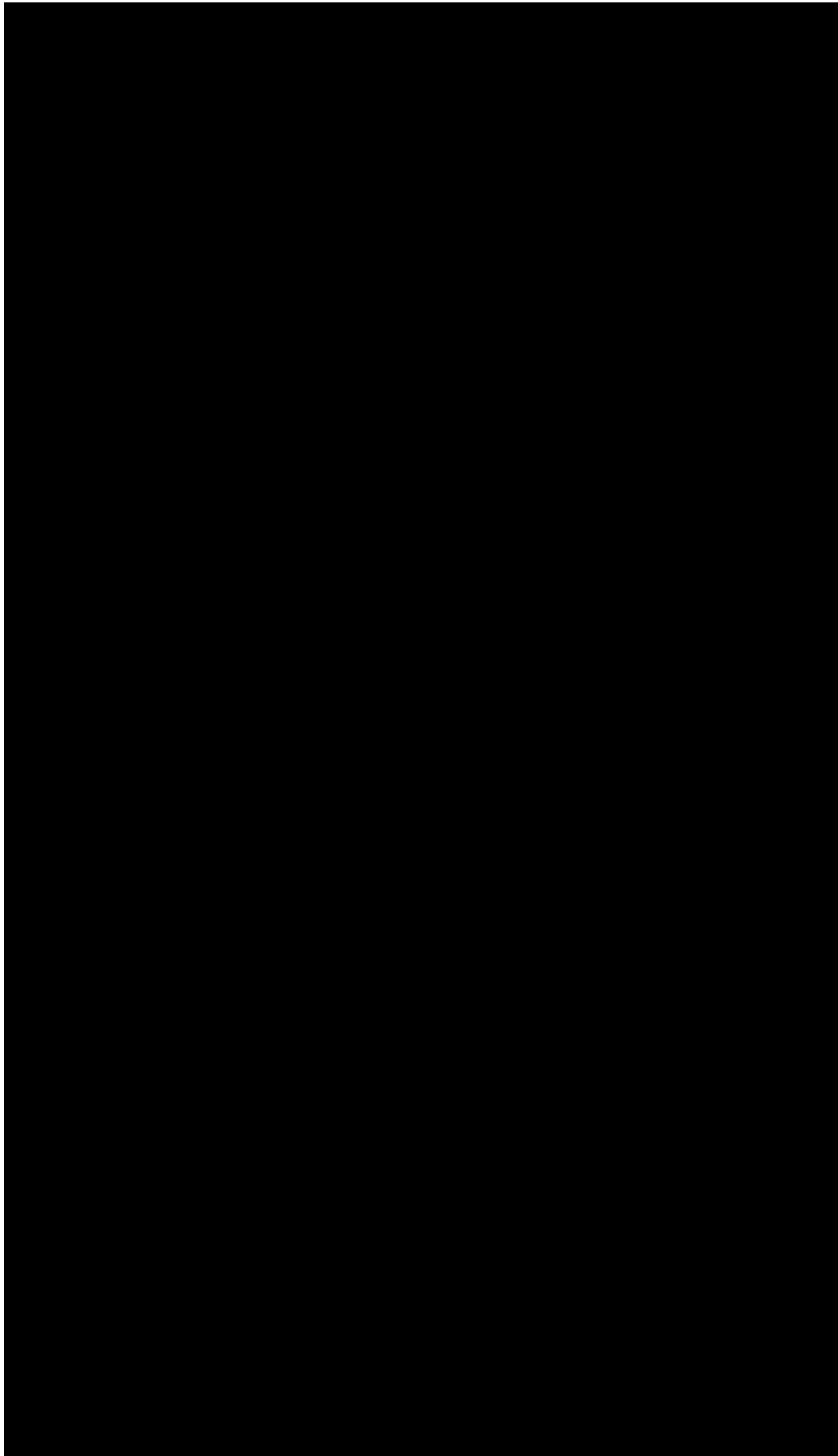
15 (Exhibit No. 22 was premarked for
16 identification.)

17 BY MR. KENNEDY:

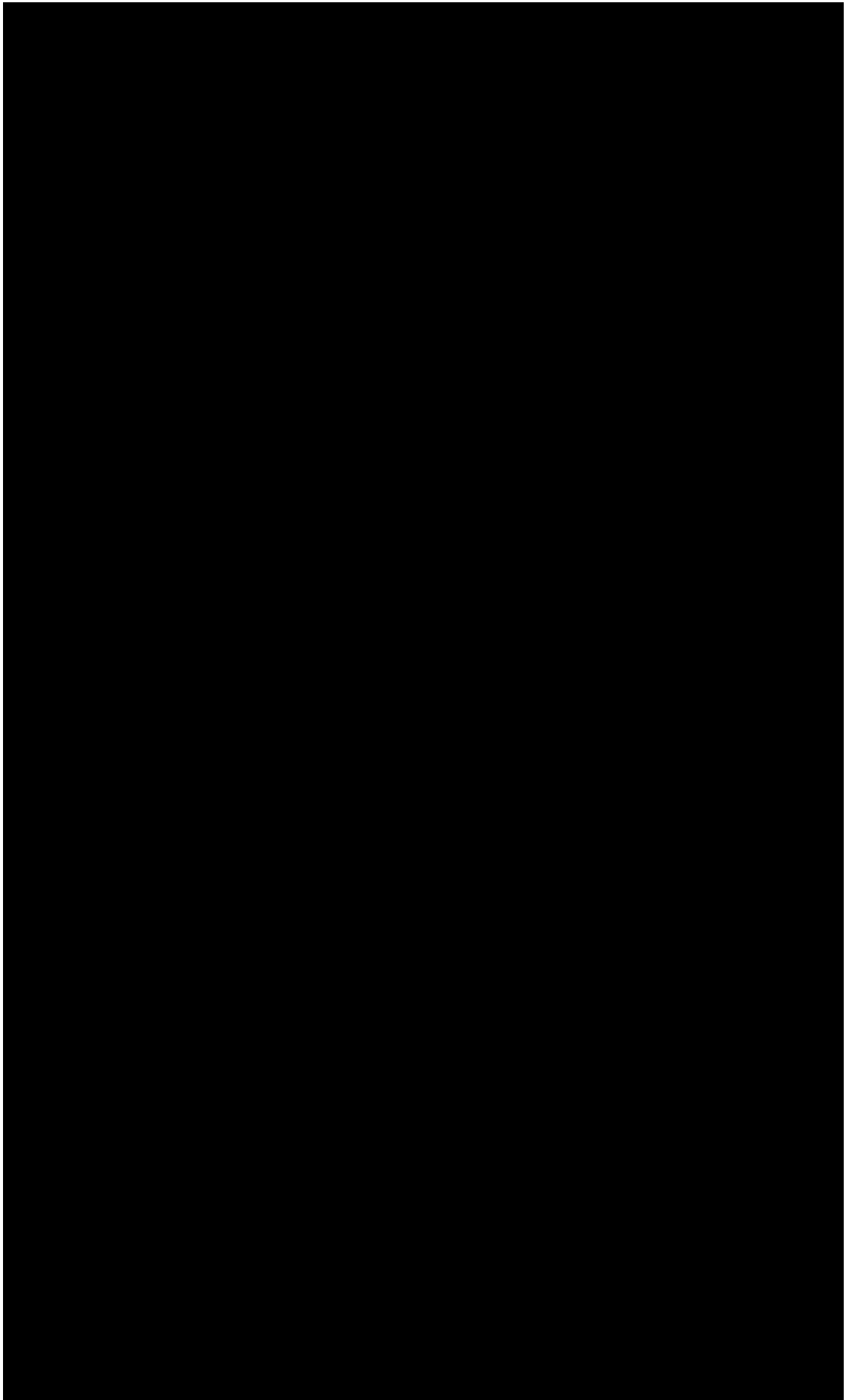
18
19
20
21
22
23
24



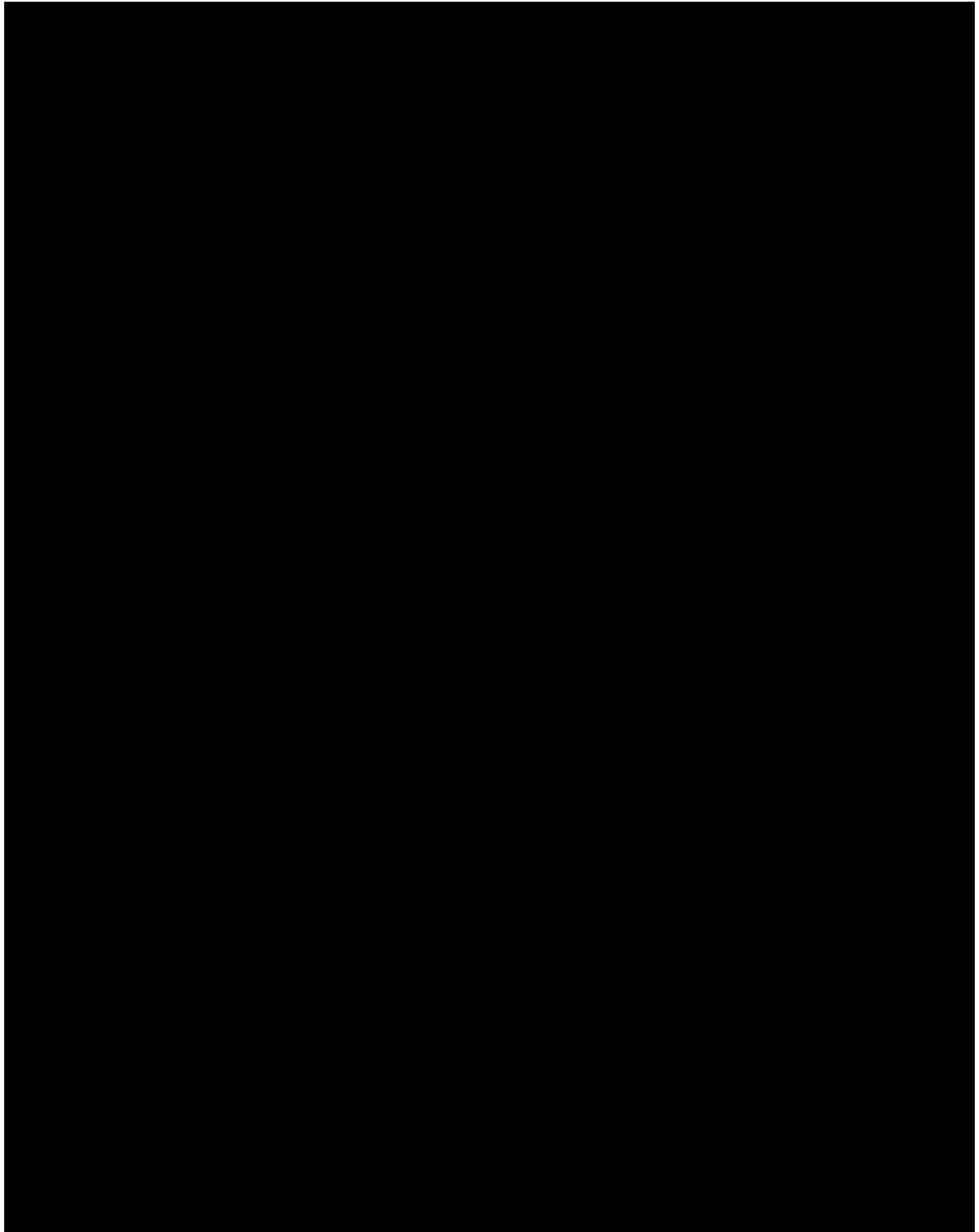
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



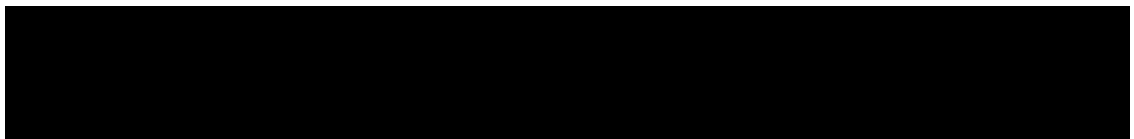
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19



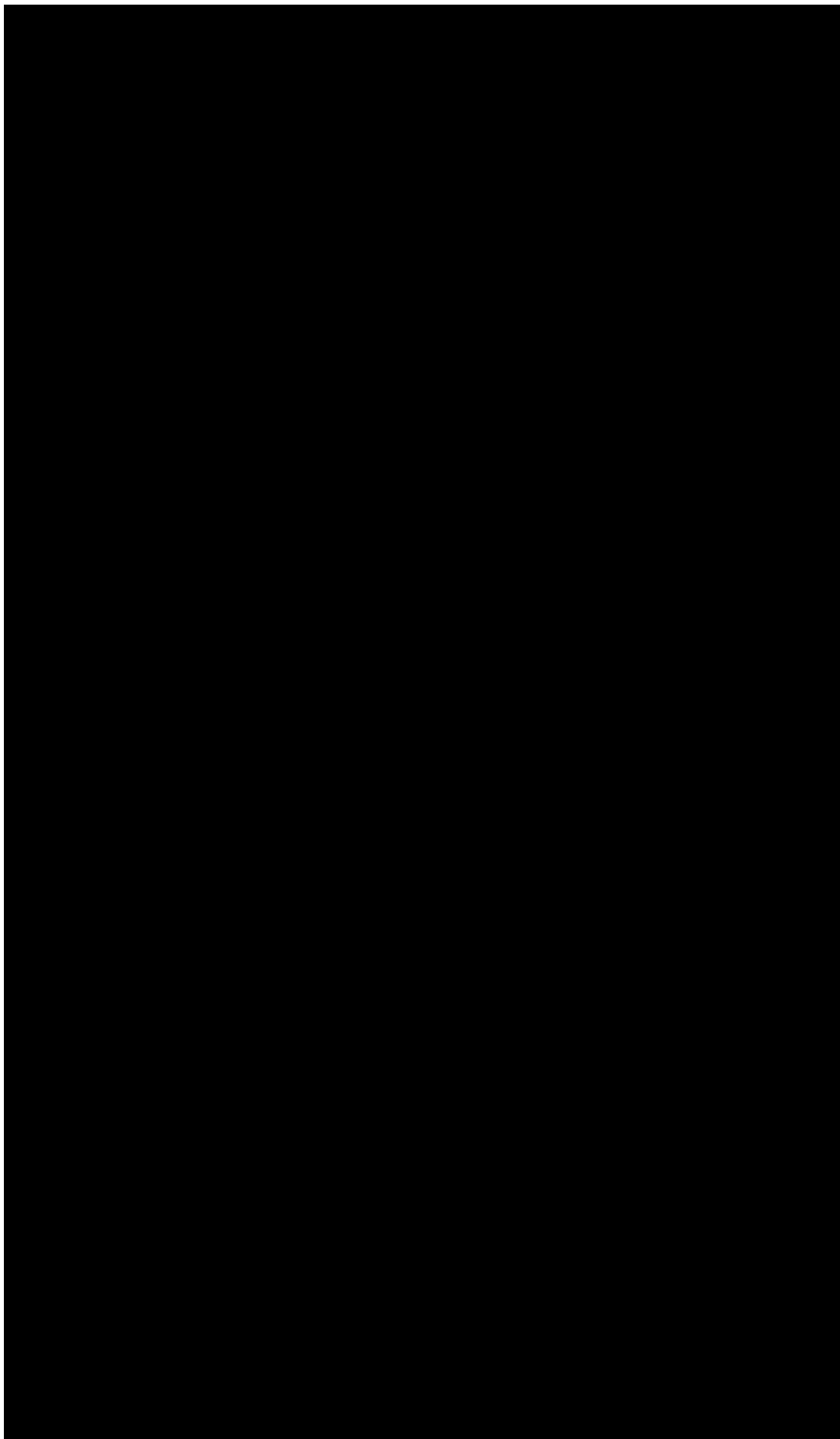
20 (Exhibit No. 17 was premarked for
21 identification.)

22 BY MR. KENNEDY:

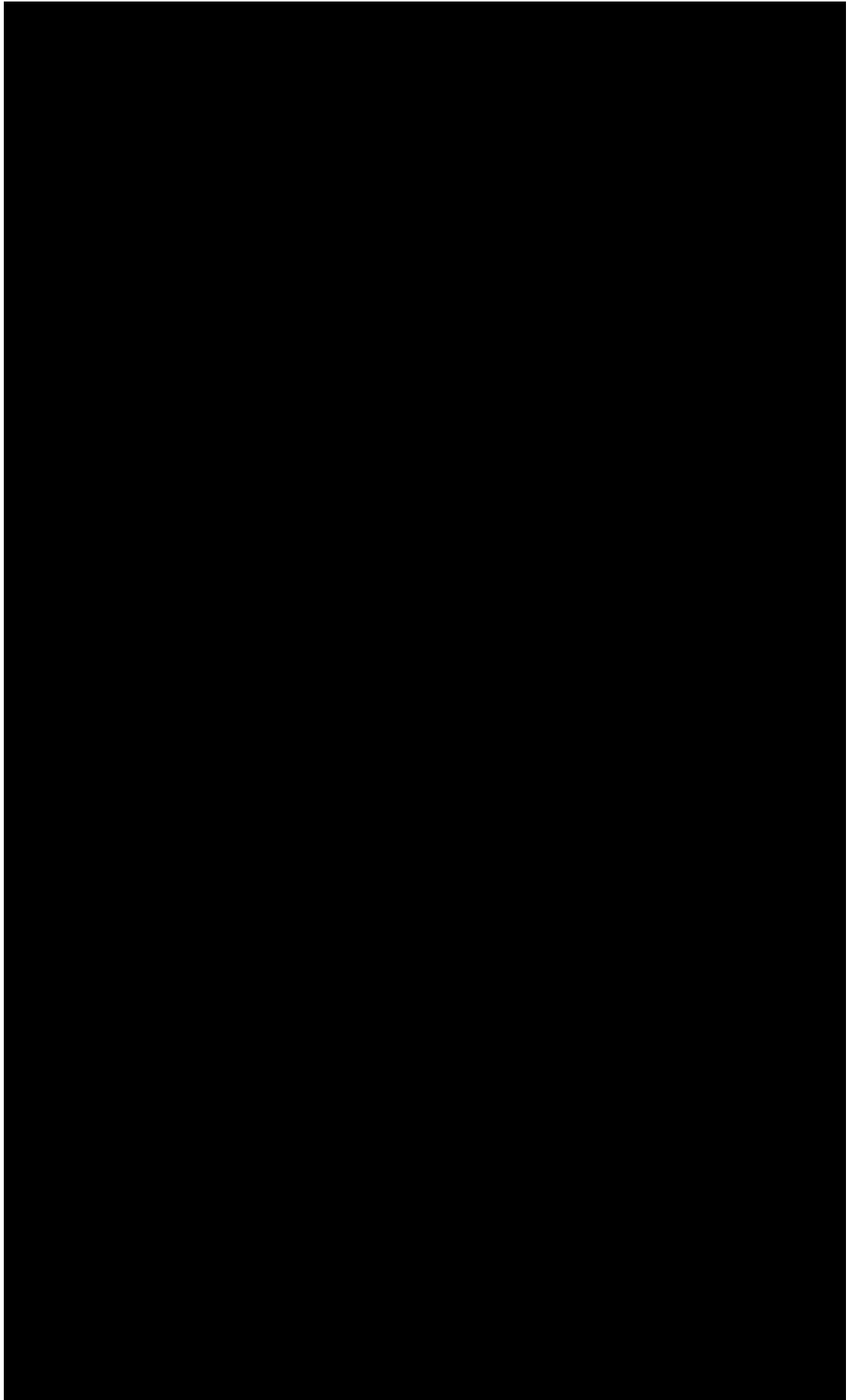
23
24



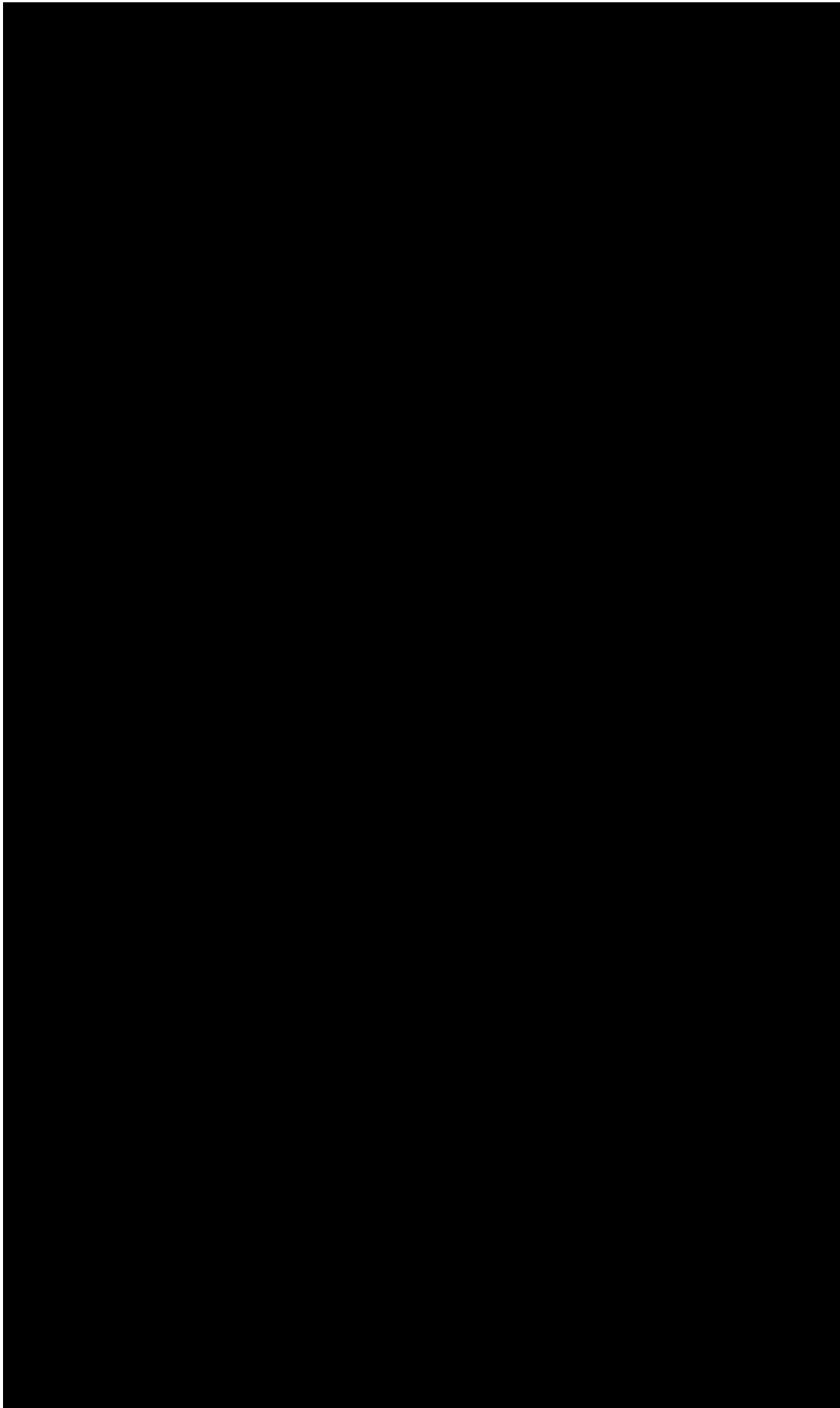
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



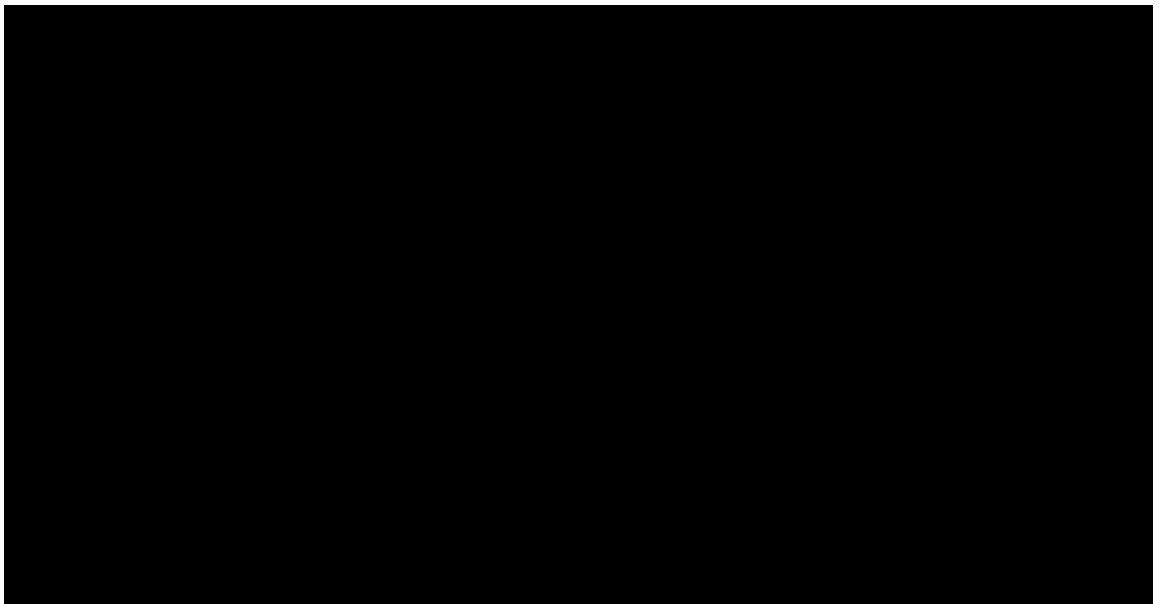
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8



9 Q All right. Well, let's look. They
10 realized you're compliant. Let's see what they
11 realized. Let's go to Exhibit 18A.

12 It's now April 29th of 2011, and that's
13 about eight months after you identified this
14 problem with the IRR, correct?

15 A There was no problem with the IRR. I
16 wanted it changed to active ingredient instead of
17 by drug.

18 Q And it's been eight months since you
19 wanted to have that done ASAP, true?

20 A Yes.

21 Q And now Gary, who you have identified
22 as -- he's somebody who's involved in IT, he makes
23 IT type changes, right?

24 A Yes.

1 Q He's sending an e-mail out, and your
2 boss, Frank Devlin, is included in -- in who he's
3 sending this to, right?

4 A Yes.

5 Q And that's April 29th, 2011, true?

6 A Yes.

7 Q And "Attachments" is the "2011-04-28
8 Logistics Business Support Requests," true?

9 A Yes.

10 Q And it says: "Good afternoon, All:
11 Attached you'll find the most current listing of
12 IT Business Support Request in the CVS IT
13 Logistics Team work queue."

14 True?

15 A Yes.

16 Q And that's the listing of things that
17 got to be done. Yes?

18 MR. BUSH: Objection.

19 THE WITNESS: It's a listing of things
20 that we want to get done.

21 BY MR. KENNEDY:

22 Q Right. And that's when you sent your
23 request eight months earlier to have a change done
24 with respect to active ingredient, historical

1 data, because, at least in your words, on that day
2 you were noncompliant, right?

3 A We were compliant, but I did write it
4 up that way to try to get it pushed through
5 quicker.

6 Q Well, let's look at eight months later
7 and see what Frank Devlin, your boss, says.

8 Go to the next page, please, where we
9 have a -- a longer chart, if you would.

10 There is a column that says "Tasks." Do
11 you see that column?

12 A Yes.

13 Q And the task that they're addressing is
14 "Revisions to IRR/SOM System." True?

15 A Yes.

16 Q And then two over, it says "Business
17 Lead," Frank Devlin, and that would mean Frank
18 Devlin, your boss, is now responsible for this --
19 this revision. It's his task.

20 MR. BUSH: Objection.

21 BY MR. KENNEDY:

22 Q Right?

23 MR. BUSH: Objection.

24 BY MR. KENNEDY:

1 Q Or is it your task?

2 A I mean --

3 MR. BUSH: Objection.

4 THE WITNESS: I don't recall now who --

5 BY MR. KENNEDY:

6 Q Well, the next column over -- and again,
7 this is April 29 of 2011, eight months after you
8 filled out the original form, and under
9 "Description / Objectives," does it say, April of
10 2011, "DEA expects CVS to prevent suspicious
11 orders from being filled out of our DCs. The
12 current IRR does not provide the proper
13 information to meet the DEA's needs. We need
14 control drugs to be monitored by 'active
15 ingredient.' Currently the control drugs are
16 monitored by item. The IRR loses all order
17 history when the info on the item changes causing
18 CVS to be noncompliant with DEA expectations."

19 Is that the statement still eight months
20 later, sir? In April of 2011, is that the
21 statement?

22 MR. BUSH: Objection.

23 THE WITNESS: That's --

24 BY MR. KENNEDY:

1 Q Did I read that right?

2 A That's the statement.

3 MR. BUSH: Did he -- did he read it
4 right? That's what he asked.

5 THE WITNESS: Yes.

6 BY MR. KENNEDY:

7 Q "Priority," next column, it says,
8 "High." You agree with that, don't you?

9 A Because of the additional work, yes.

10 Q And you said ASAP eight months earlier,
11 did you not?

12 A I did.

13 Q Where -- does it say here,
14 "Objectives" -- does it say we need to do this
15 ASAP because it's too much work for
16 Mr. Mortelliti? Does it say that anywhere?

17 A No, I wouldn't have got that through if
18 I worded it like that.

19 Q Right. Well, again, you weren't --
20 again, it wasn't your policy, wasn't your practice
21 to write things down that you -- that you believed
22 were untrue, was it, sir?

23 A I wouldn't be here 25 years if I did.

24 Q All right. And it indicates "As of

1 Date," 4/29/11 -- so this is the status as of that
2 date, is it not?

3 A According to this paper.

4 Q And it says "Start." Do you see
5 "Start" -- the "Start" column?

6 A Yes.

7 Q It says: "Start, 2/11/2011." You
8 discovered this problem in 2010, five months
9 before that, did you not?

10 A I don't know if this is the same
11 problem. I don't know if they're referring to
12 strictly the active ingredient or if we were still
13 losing historical data. I -- I didn't write this
14 piece.

15 Q This is -- these are the same words
16 that you wrote eight months earlier. Almost
17 identical, right, to what you wrote eight months
18 earlier?

19 A Yeah, but I didn't put it in this form.
20 I --

21 Q No, Frank Devlin now put it in this
22 form, and he put it in this form, sir, and he
23 states the same thing that you stated eight months
24 earlier: "CVS is noncompliant with DEA

1 expectations." Isn't -- he says the same thing
2 eight months after you said it, does he?

3 MR. BUSH: Objection.

4 THE WITNESS: He says it, but he knew we
5 were compliant.

6 BY MR. KENNEDY:

7 Q Was -- was your boss, Frank Devlin, was
8 he in the habit also of -- of writing things down
9 in formalized documents and forms that he believed
10 weren't true?

11 That wasn't his habit, was it?

12 MR. BUSH: Objection.

13 THE WITNESS: No. But in -- in our
14 company, we've -- did word things to get things
15 accomplished. Didn't happen often, but this is
16 one case where we really wanted to save manhours
17 and get the active ingredient.

18 BY MR. KENNEDY:

19 Q Sir, let me -- let me ask you, it's 2011
20 when this is being written.

21 A Mm-hmm.

22 Q Was it a matter of manhours or was it a
23 matter of doing what was right for this country in
24 the midst of an opioid crisis? Which one was it?

1 A If --

2 MR. BUSH: Objection.

3 THE WITNESS: If this was a noncompliant
4 issue and harming the public, this would have been
5 done instantly. They knew we were compliant,
6 which is why it dragged out as long as it did.

7 BY MR. KENNEDY:

8 Q And you knew and understand by 2011, did
9 you not, because you were getting communications
10 from a variety of sources that were letting you
11 know that clearly by 2011, that prescription
12 opioids were killing more people in America than
13 cocaine and heroin combined? Were you aware of
14 that?

15 A I don't recall dates, what years we
16 started hearing about the opioid crisis. I
17 strictly knew my job was to prevent every single
18 pill leaving our distribution centers from
19 diversion.

20 Q And you were good at your job, weren't
21 you?

22 A I felt I was.

23 Q And, sir, you were conscientious at your
24 job, were you not?

1 A I felt I was.

2 Q And that's why you wanted to do the
3 right thing, didn't you?

4 A I did the right thing.

5 Q Yeah, and doing the right thing in
6 October of 2010 was saying, We need to make this
7 change ASAP because we are noncompliant with DEA
8 expectations. That's what you did in 2010.

9 MR. BUSH: Objection.

10 BY MR. KENNEDY:

11 Q True, sir?

12 A We were compliant. I wanted to make it
13 easier.

14 Q Let's look at here on this same -- look
15 at that last column where it says "Finish." Do
16 you see that?

17 A Yes.

18 Q Expected finish, 12/31/2011, is that
19 when this was finally done, sir, more than a year
20 after you requested it?

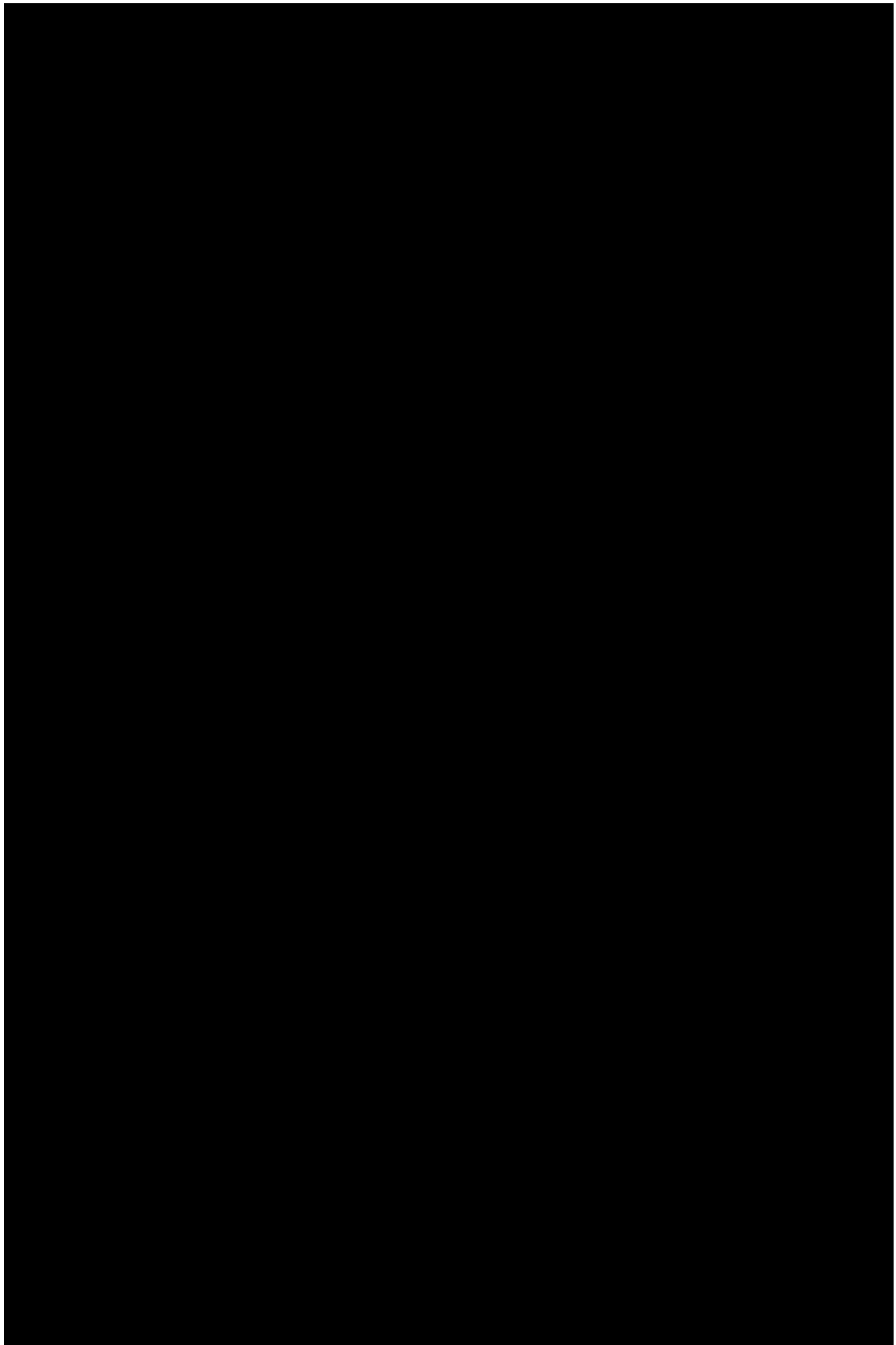
21 A I have --

22 Q 12/31/2011 was when they finally made
23 the change to become DEA compliant.

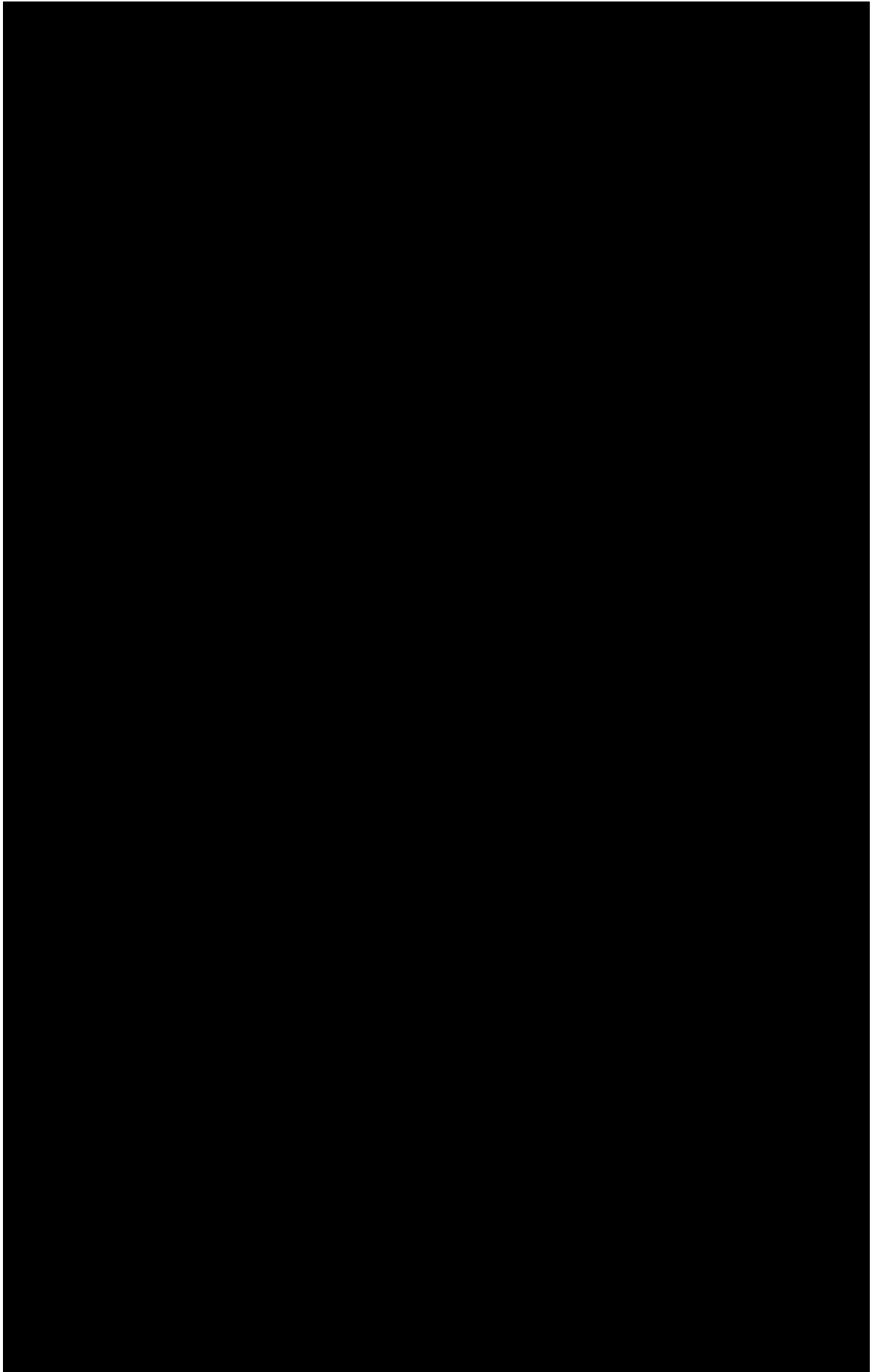
24 MR. BUSH: Objection.

1 THE WITNESS: I don't have a
2 recollection of that.

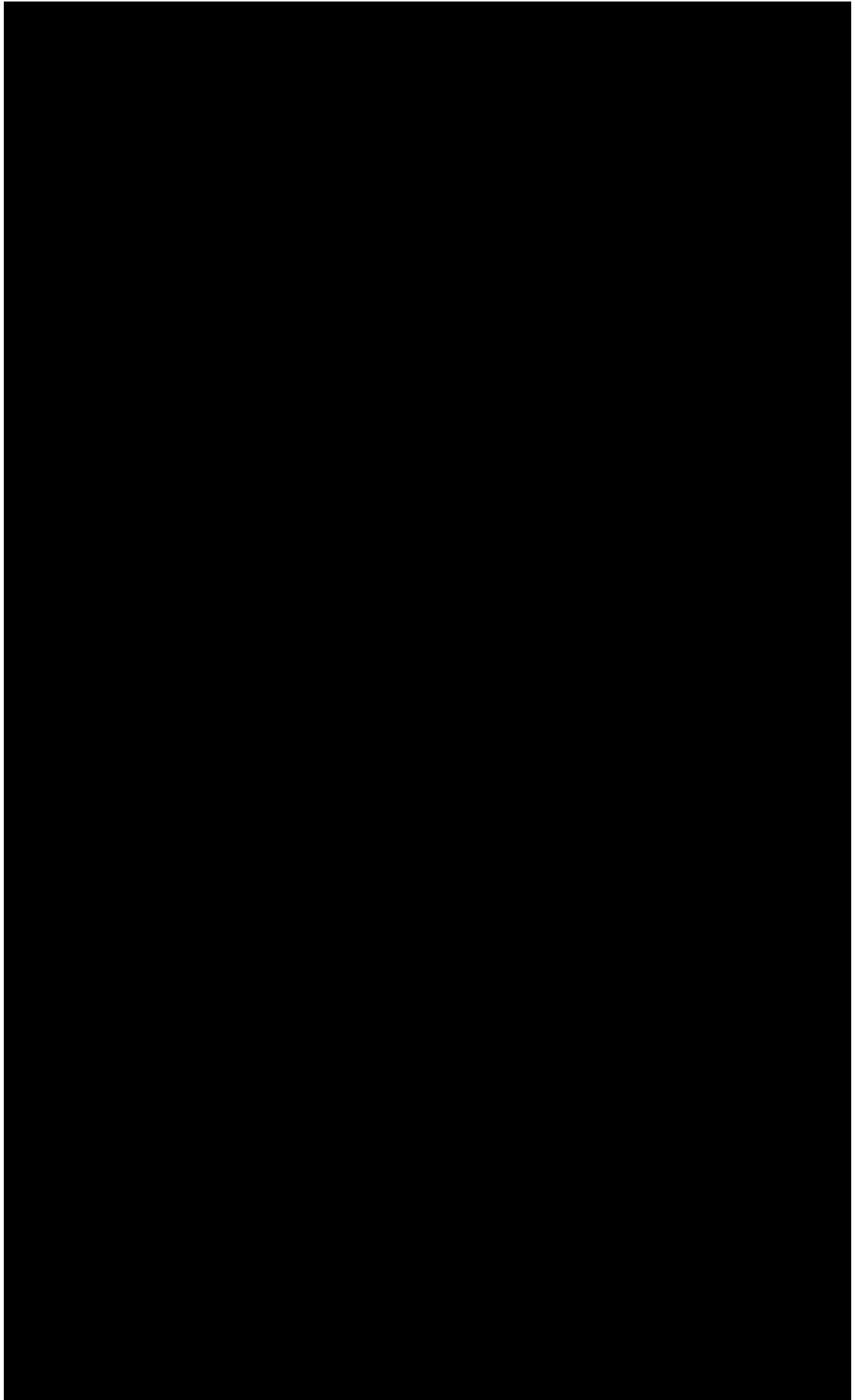
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



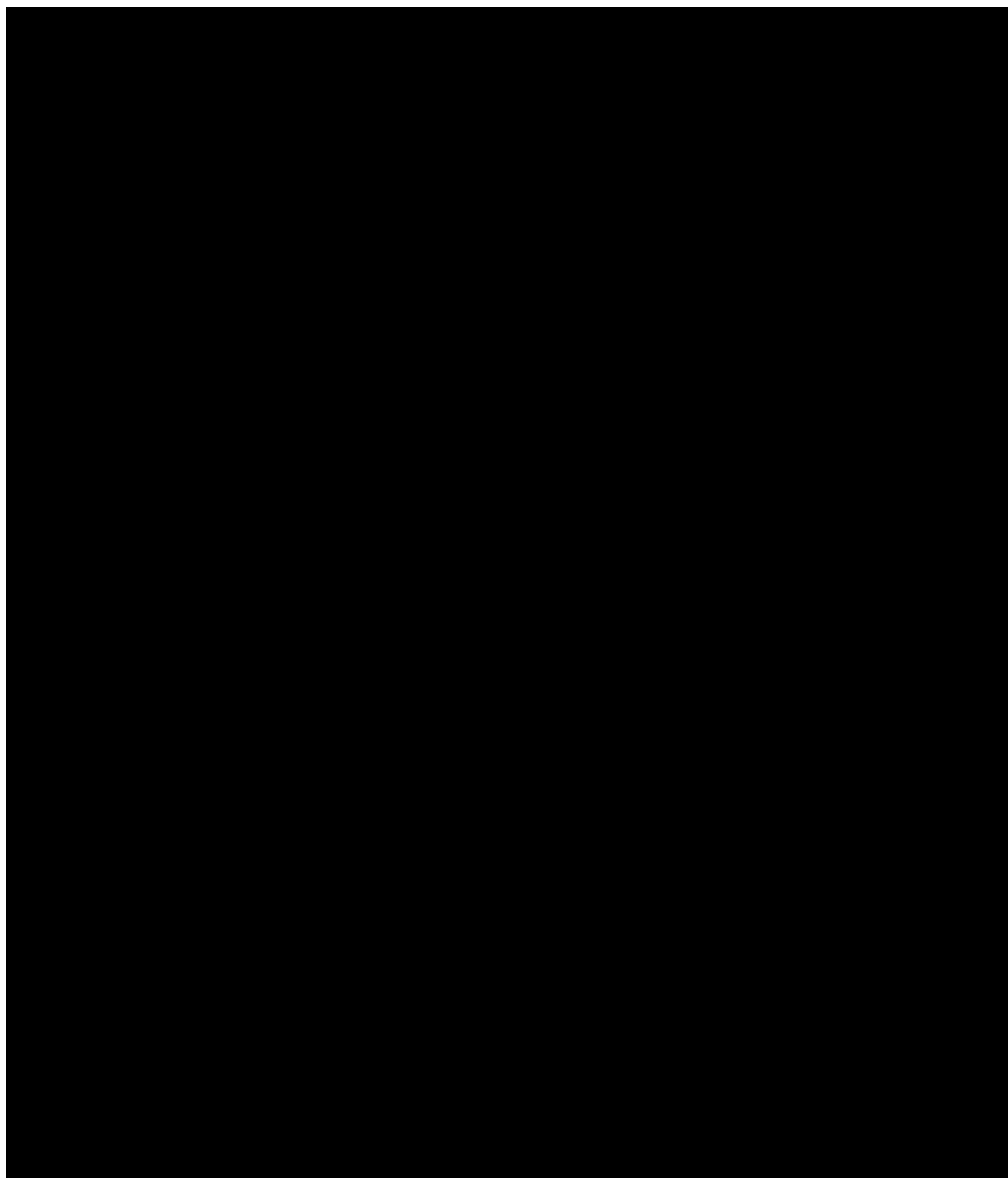
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17



18 MR. KENNEDY: Let's take a quick
19 break -- I'm going to check with these folks, take
20 a quick break just to see -- I might be done.

21 THE VIDEOGRAPHER: It's 12:00 p.m. We
22 are going off the record.

23 (Lunch recess.)

24 THE VIDEOGRAPHER: The time is 12:53

1 p.m., and we're back on the record.

2 DIRECT EXAMINATION

3 BY MR. BAKER:

4 Q My name is William Baker. I'm going to
5 follow up with some questions that Mr. Kennedy
6 asked you this morning, and then I may have some
7 other questions.

8 Fair enough?

9 A Yes.

10 (Exhibit No. 562 was premarked for
11 identification.)

12 BY MR. BAKER:

13

14

15

16

17

18

19

20

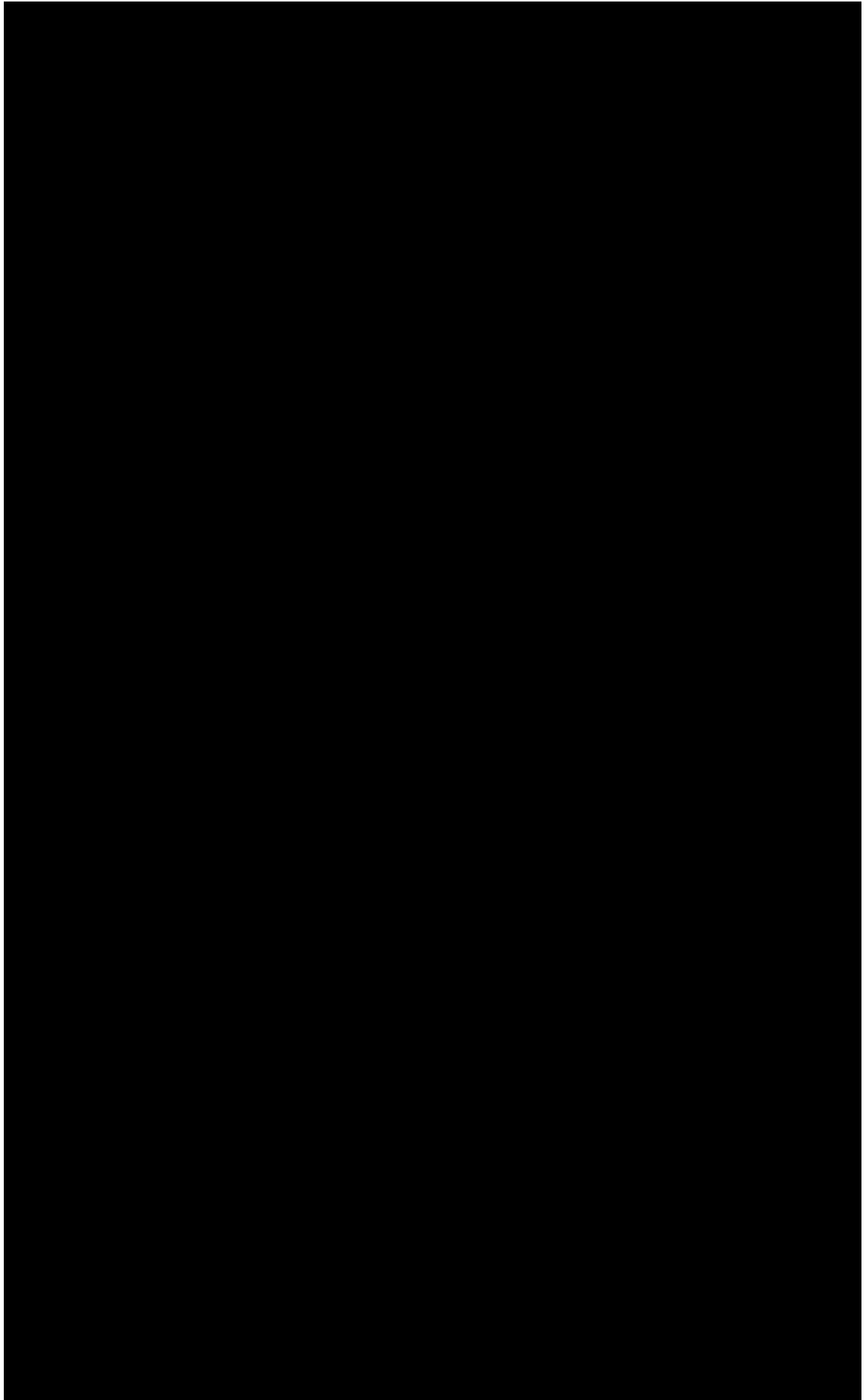
21

22

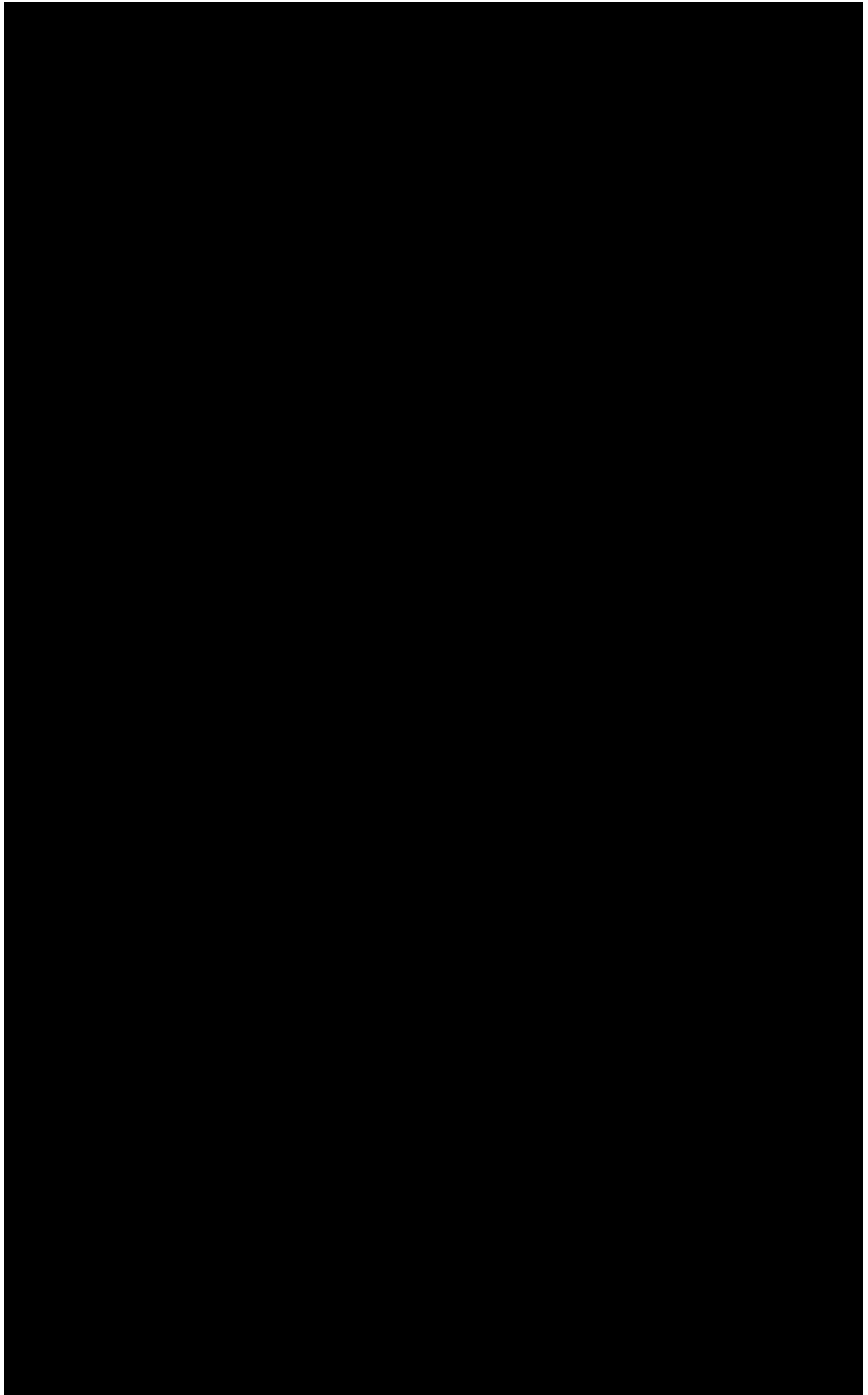
23

24

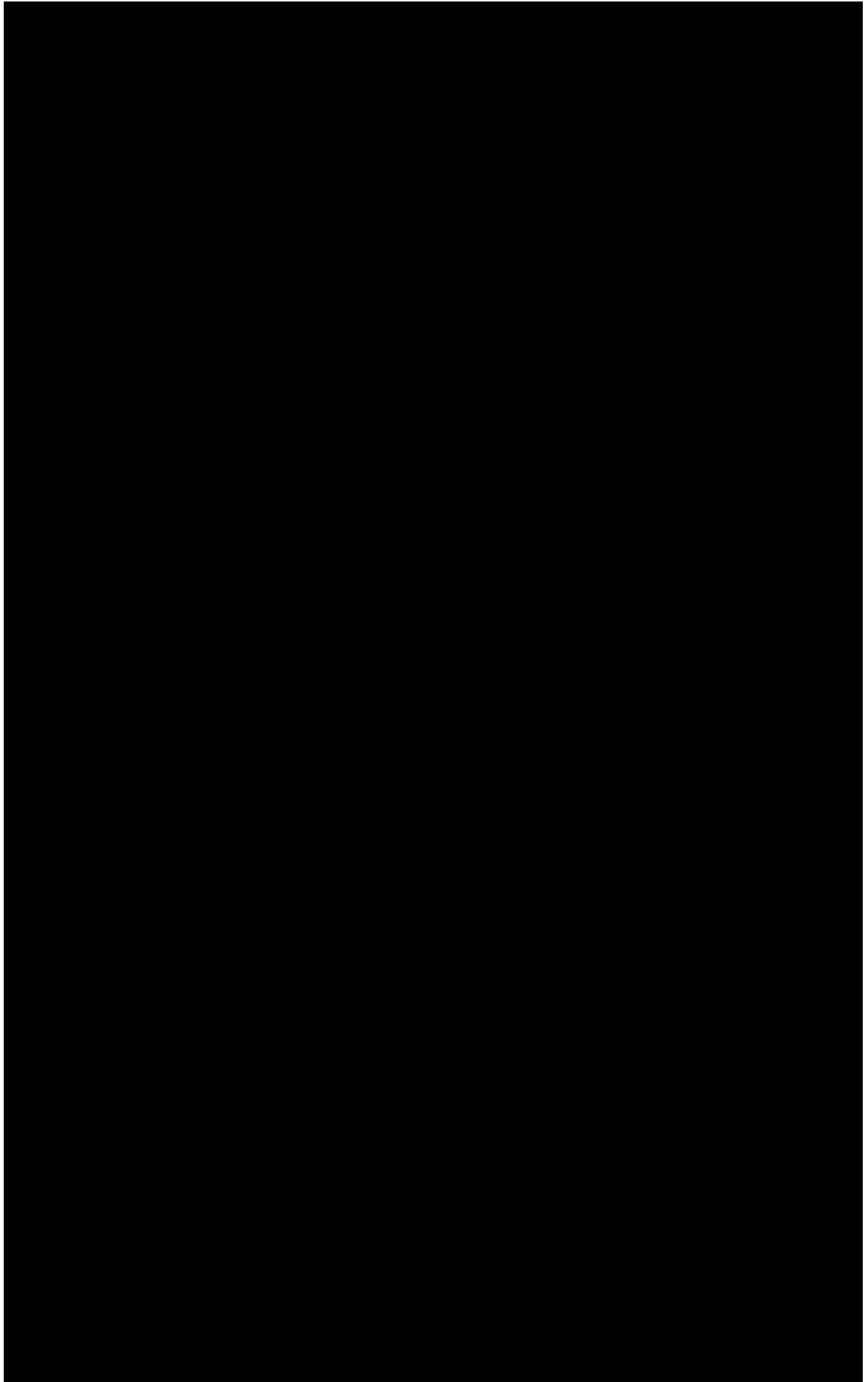
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



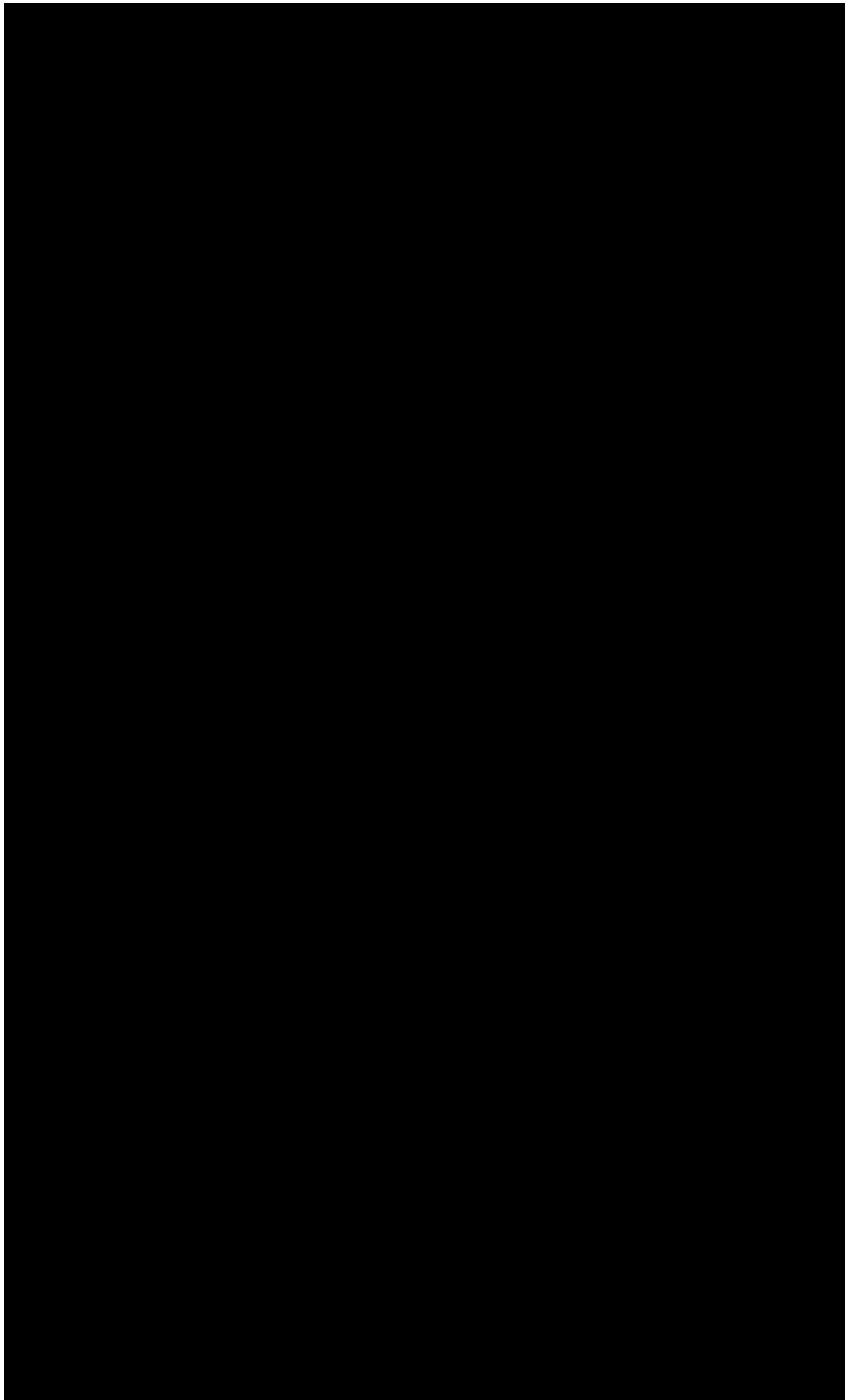
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



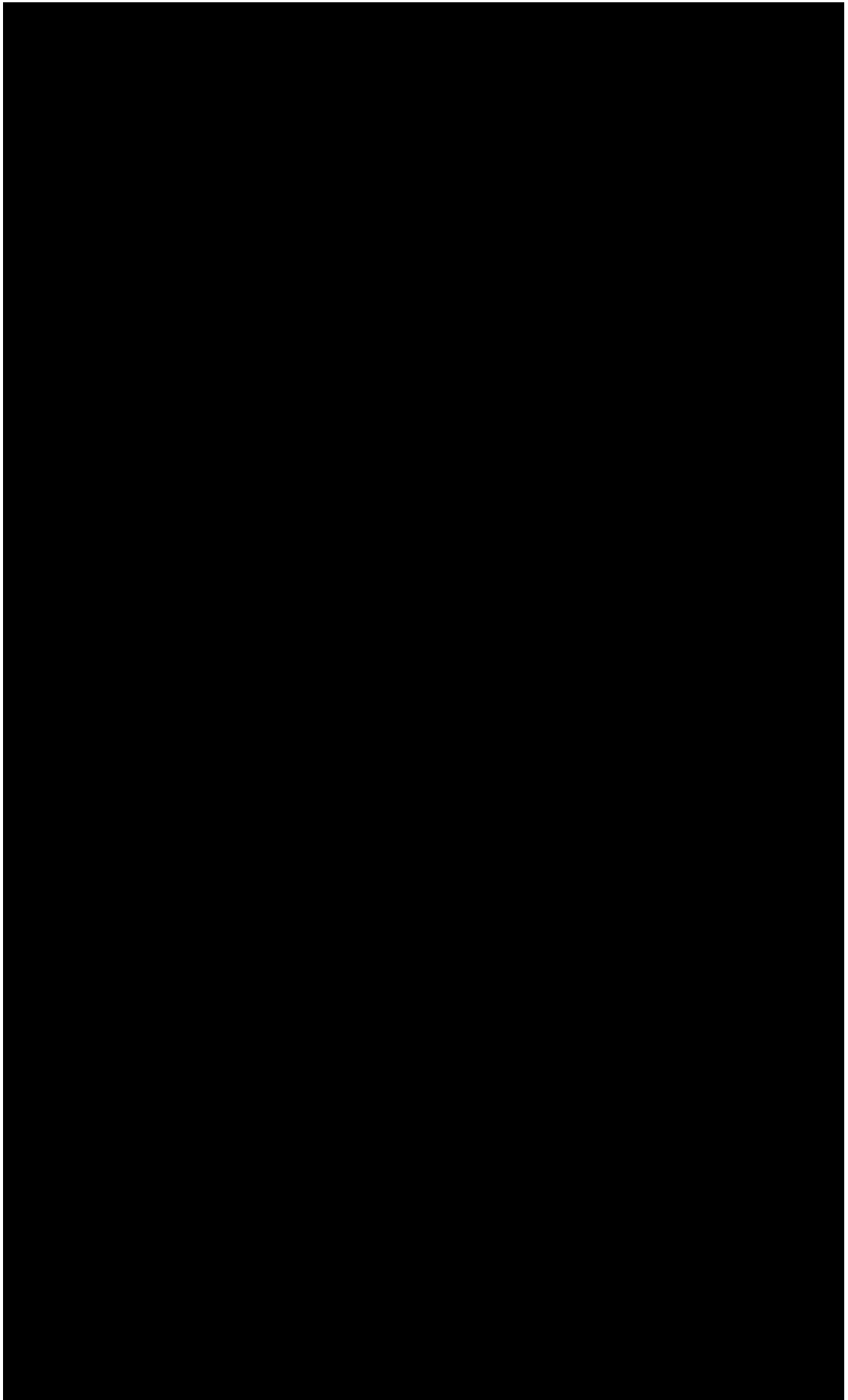
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



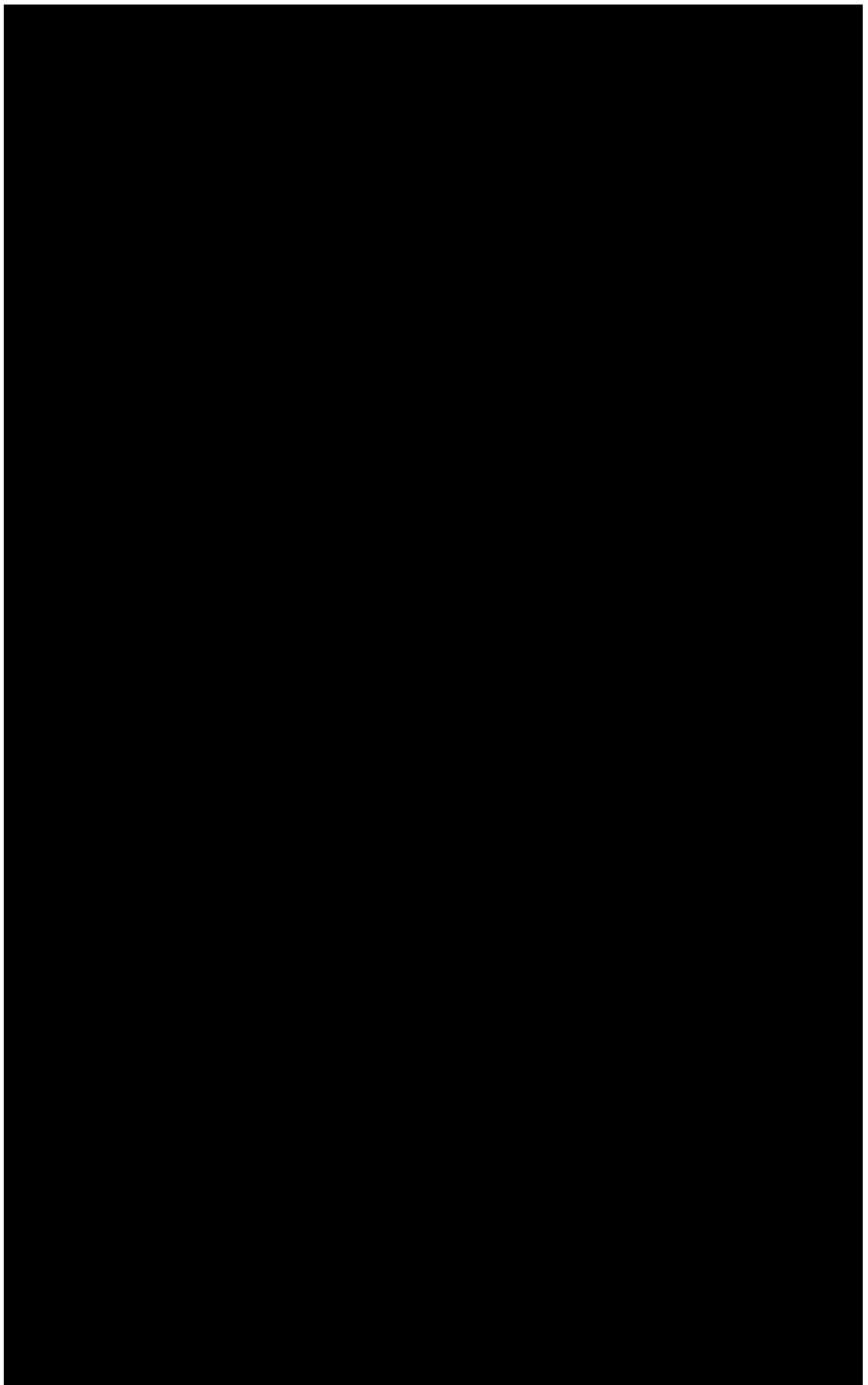
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



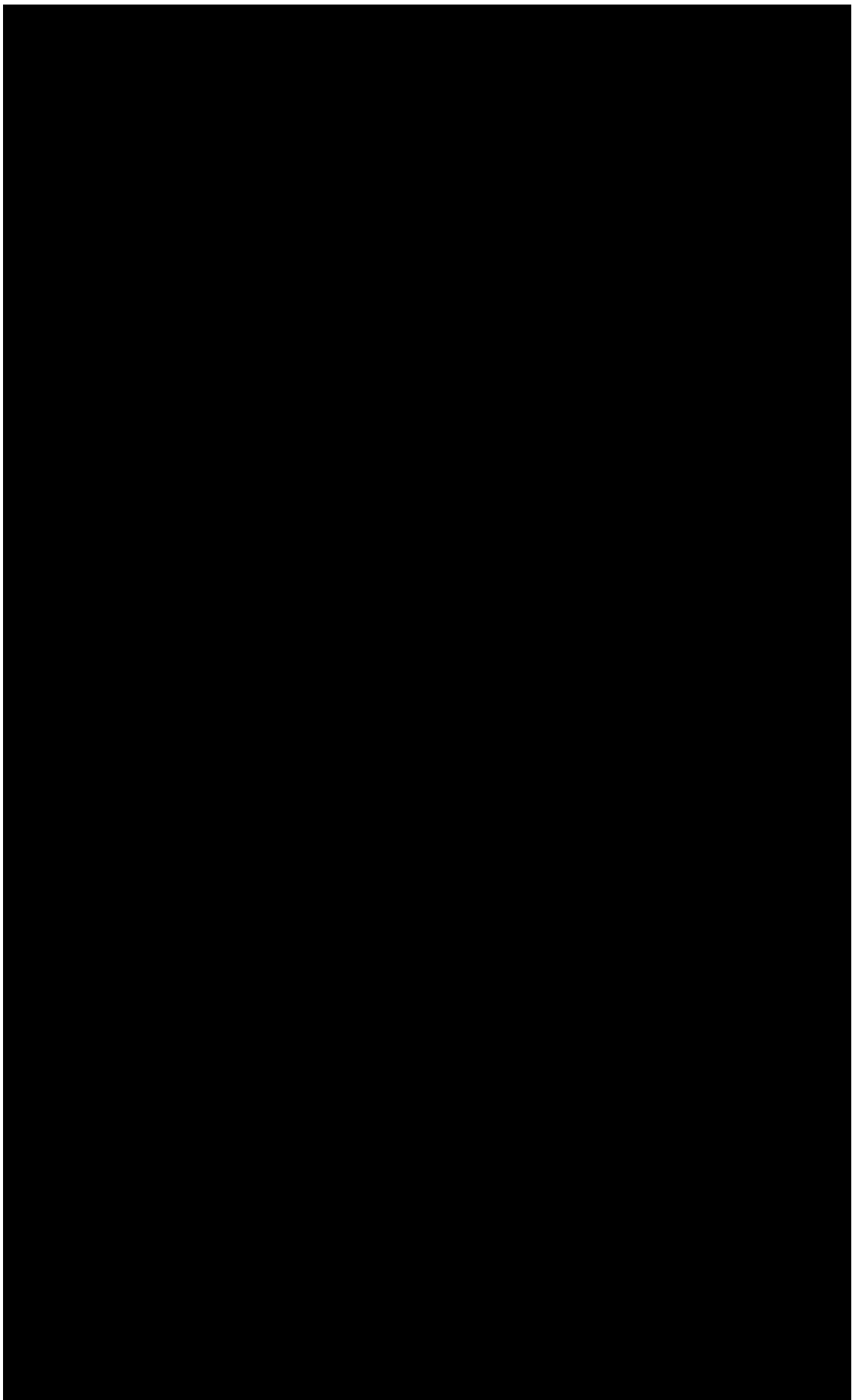
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



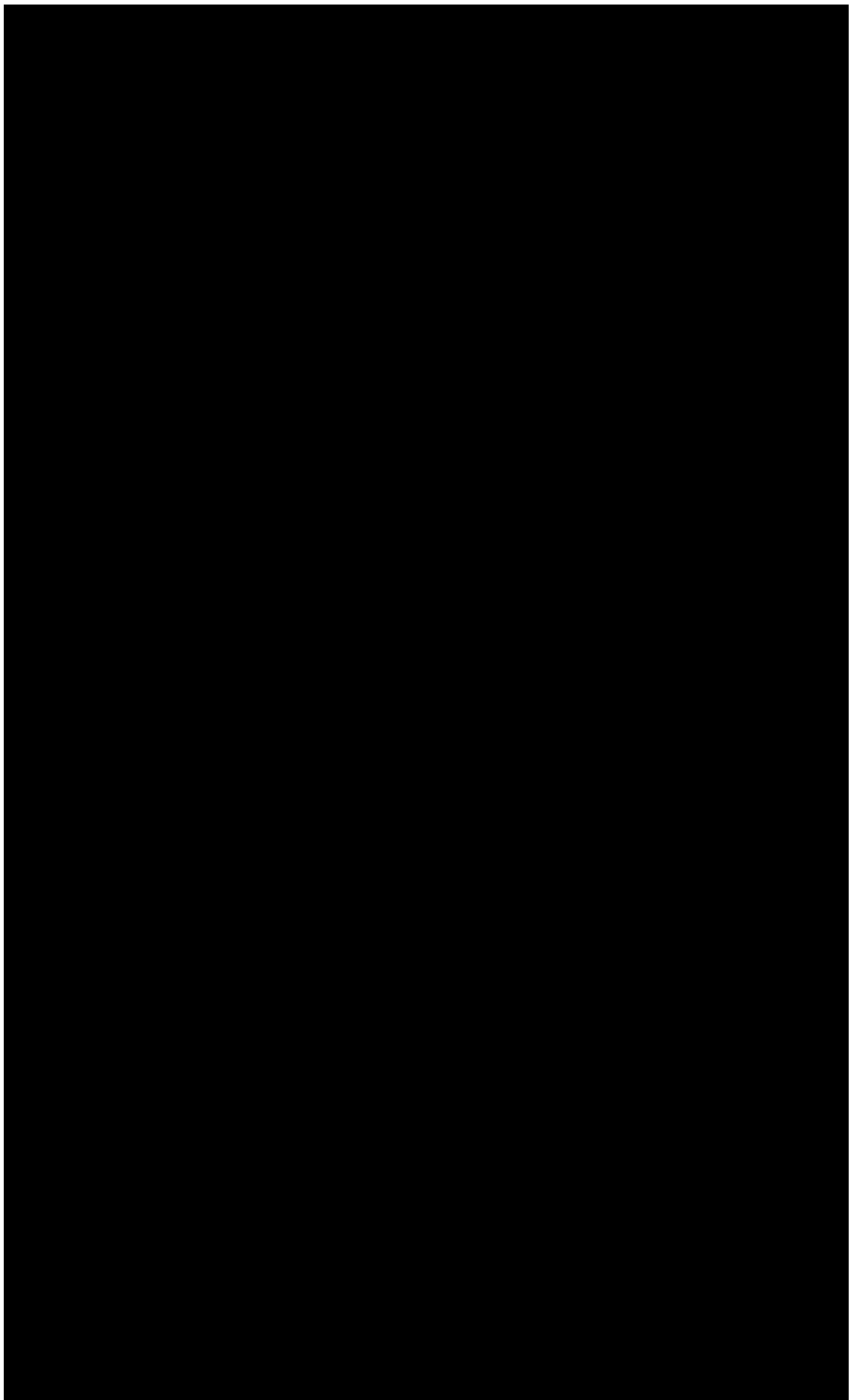
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

Q I'm asking you what policies and process. What policies and process do they follow to do this investigation?

A I don't know.

Q Are there any policies and processes that were in existence at CVS at that time that determined what a VIPER field analyst would do for an investigation of an order of hydrocodone that you referred to them that came off the IRR form that you were looking at?

MR. BUSH: I object.

THE WITNESS: I don't know.

BY MR. BAKER:

Q Okay. Well, if you don't know, then how do you know that they're following some procedure? How do you even know that?

MR. BUSH: Objection.

1 THE WITNESS: That's their position.

2 That's what they're supposed to do.

3 BY MR. BAKER:

4 Q The truth is you don't know what they
5 were doing, am I correct? That's the absolute
6 bottom line truth is you don't know what they were
7 doing to investigate these orders, correct?

8 MR. BUSH: Objection.

9 BY MR. BAKER:

10 Q Correct?

11 MR. BUSH: Objection.

12 THE WITNESS: I don't know the steps
13 they were doing. I know they were investigating.

14

15

16

17

18

19

20

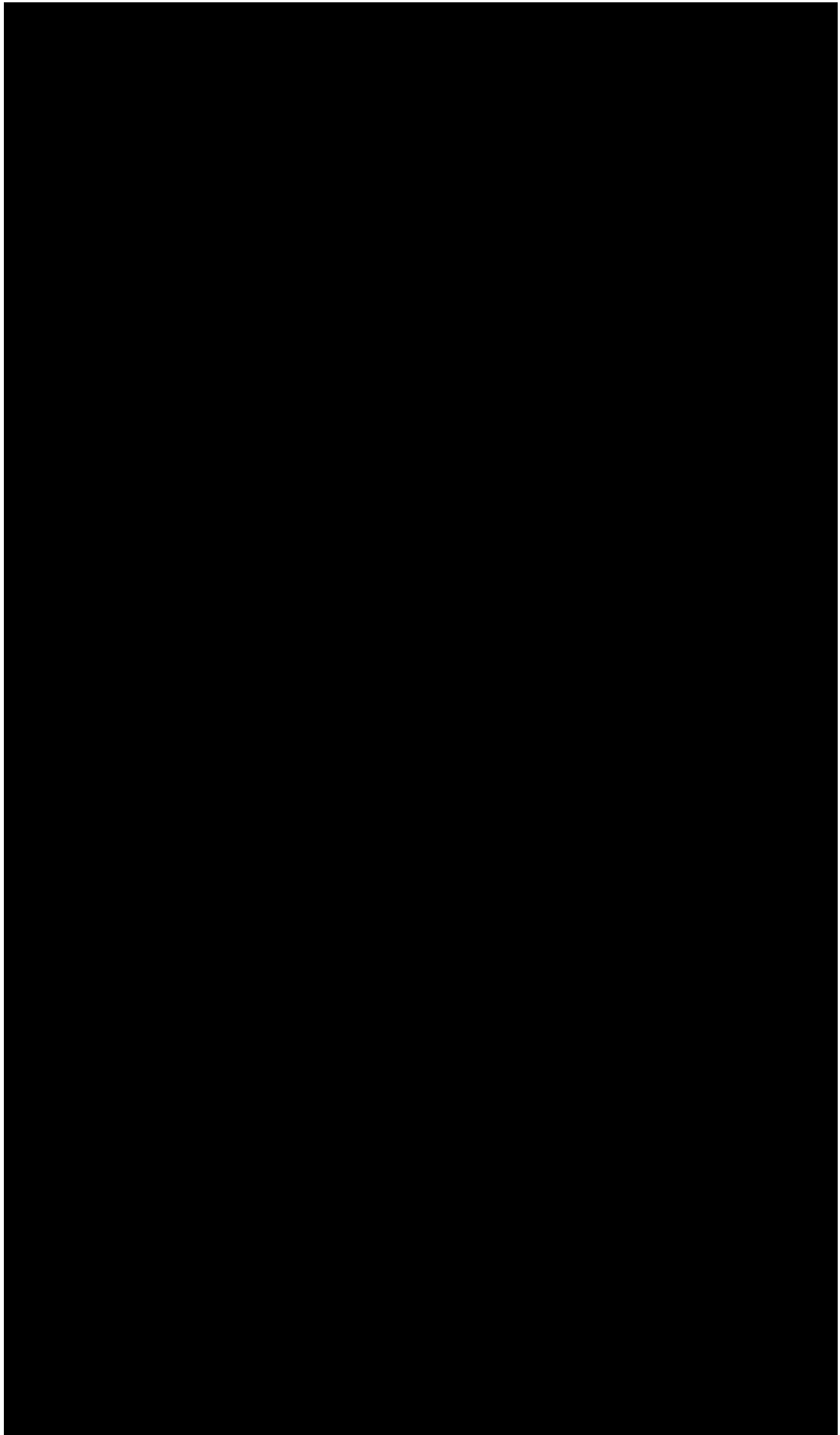
21

22

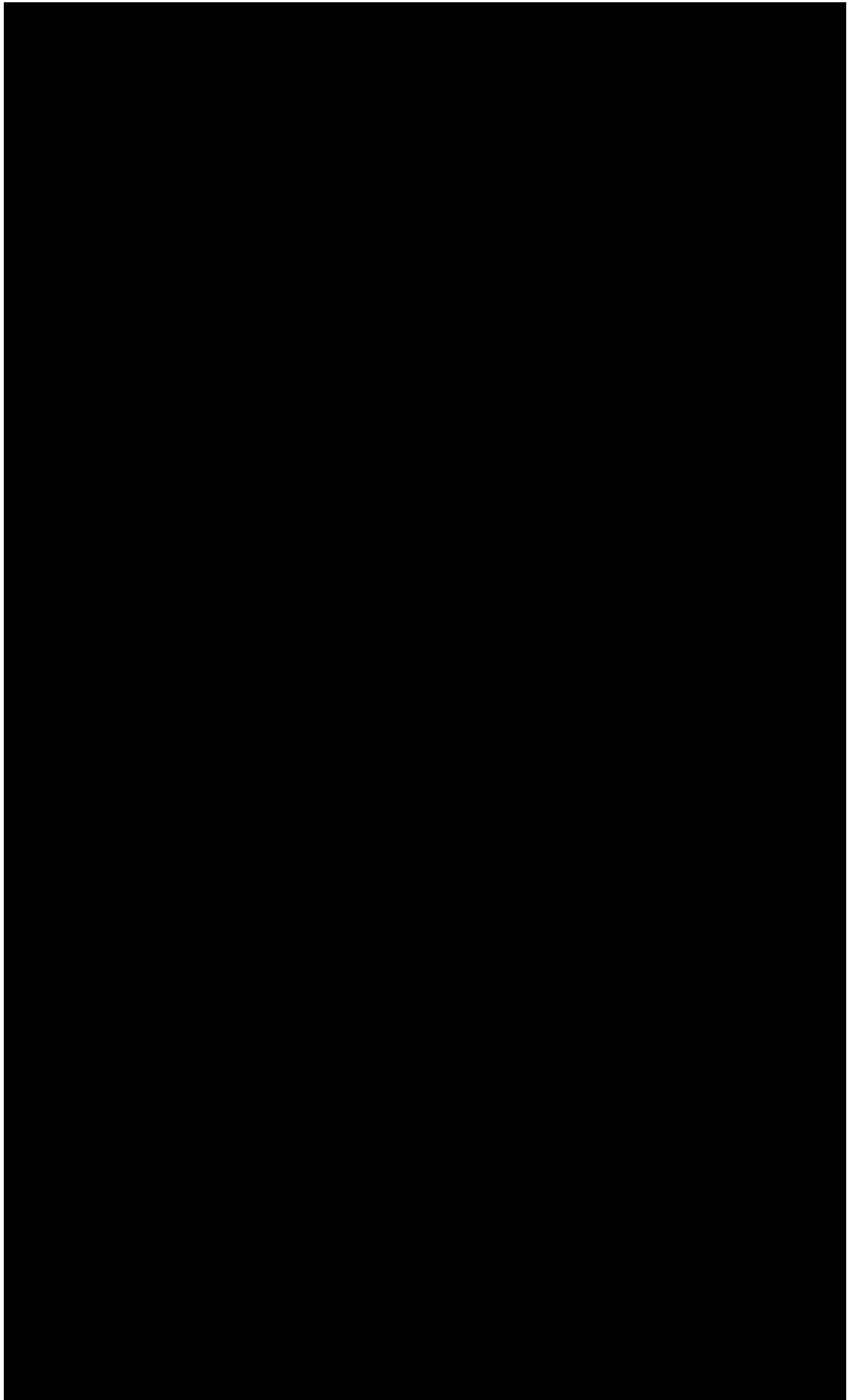
23

24

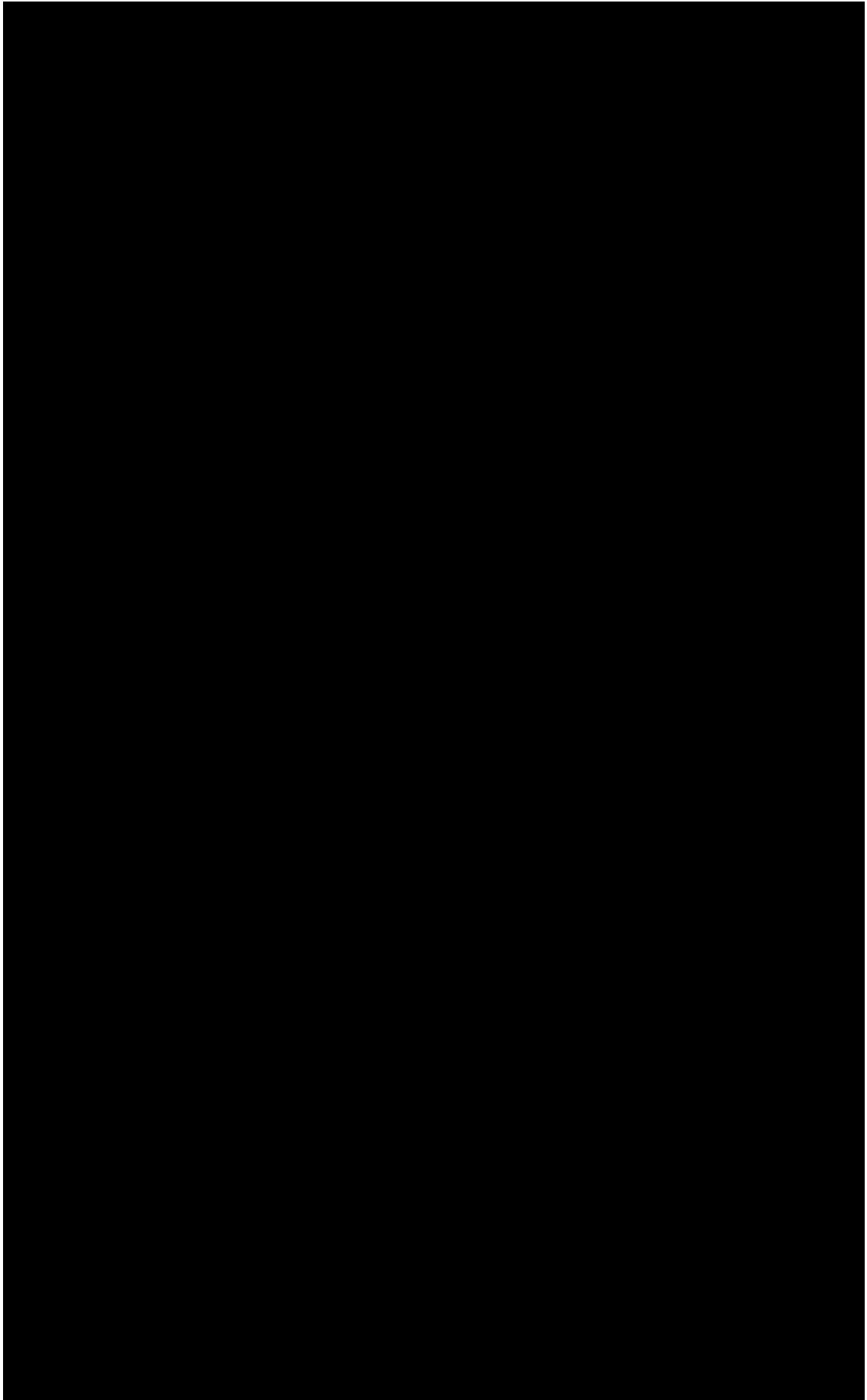
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



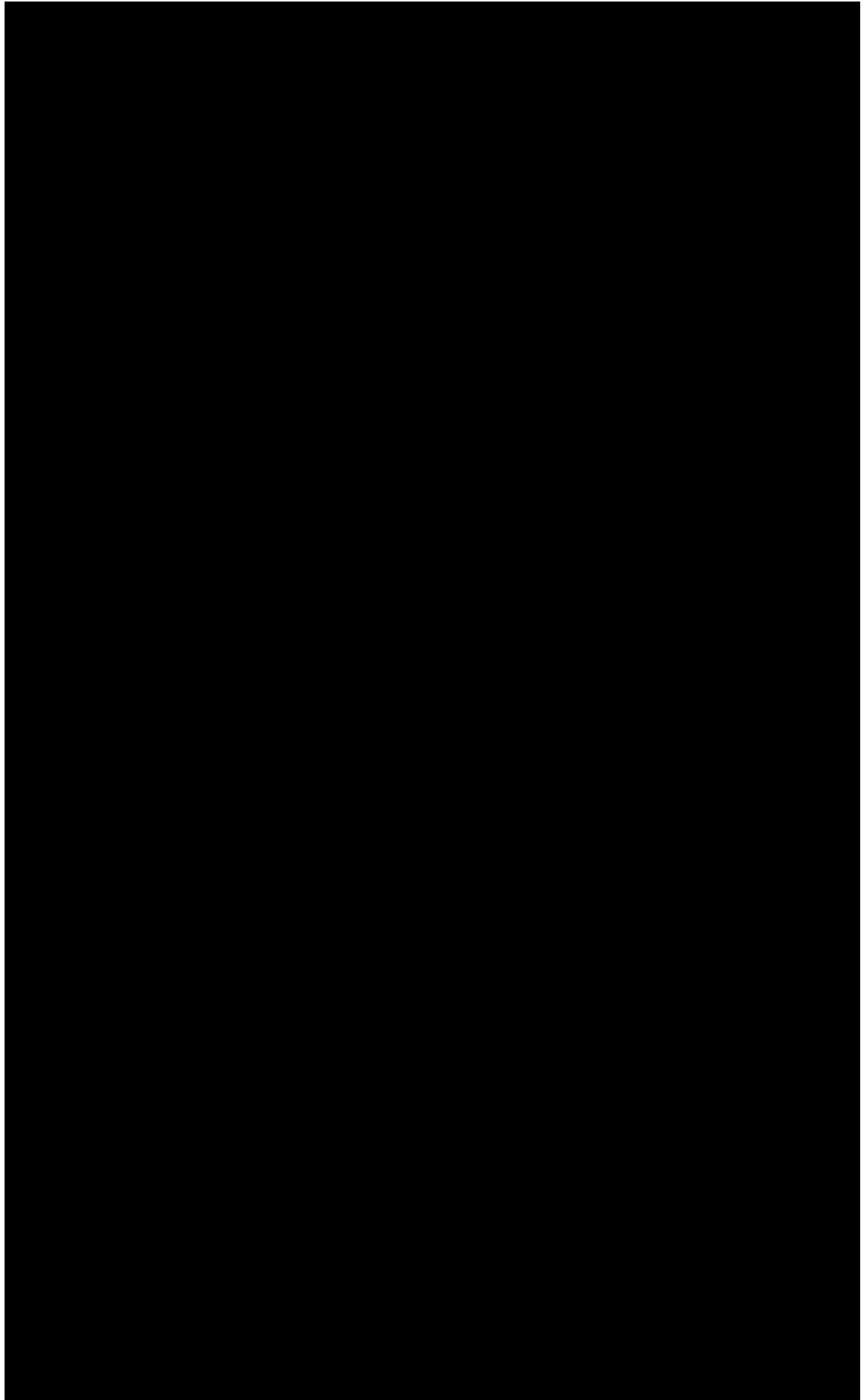
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



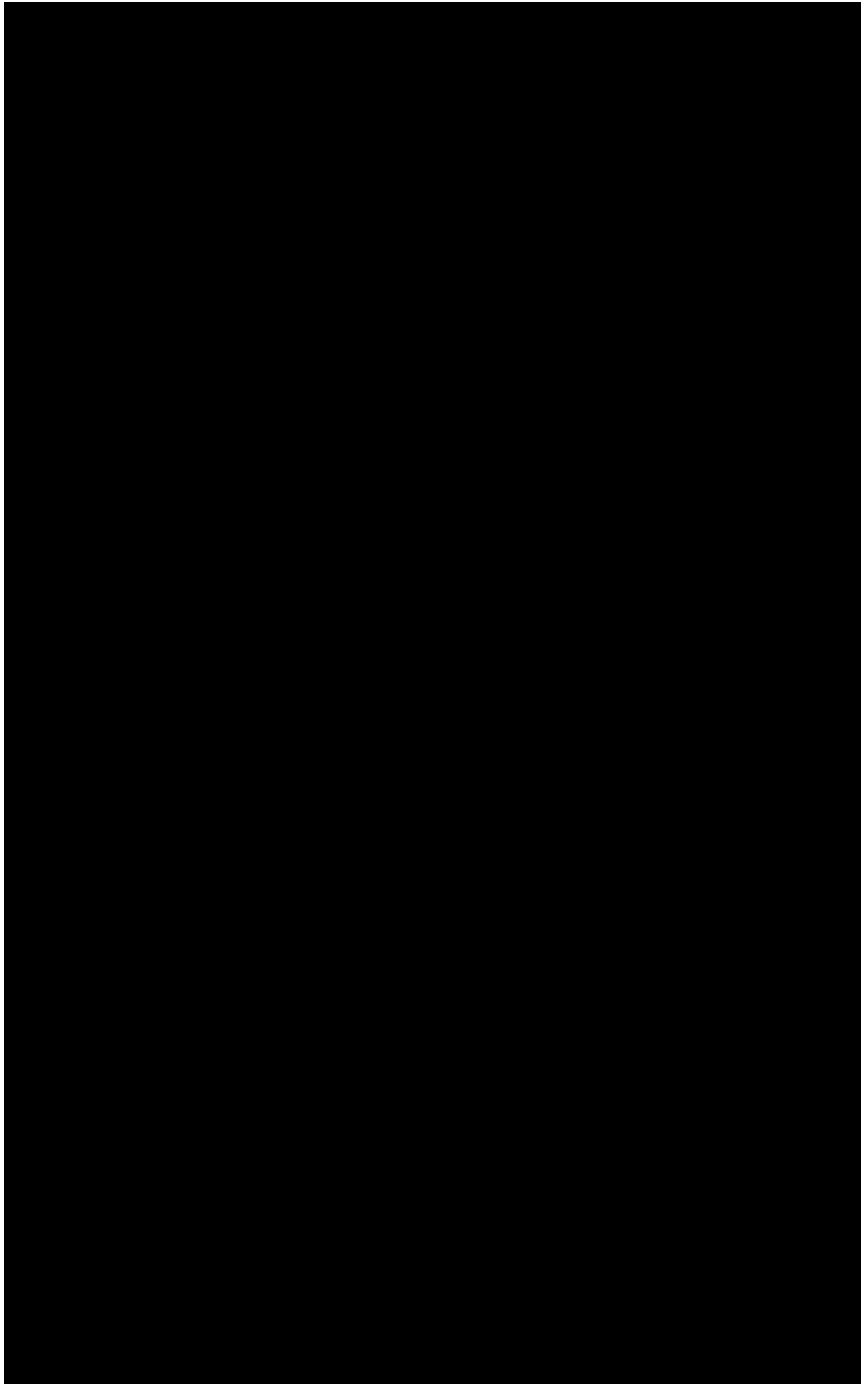
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



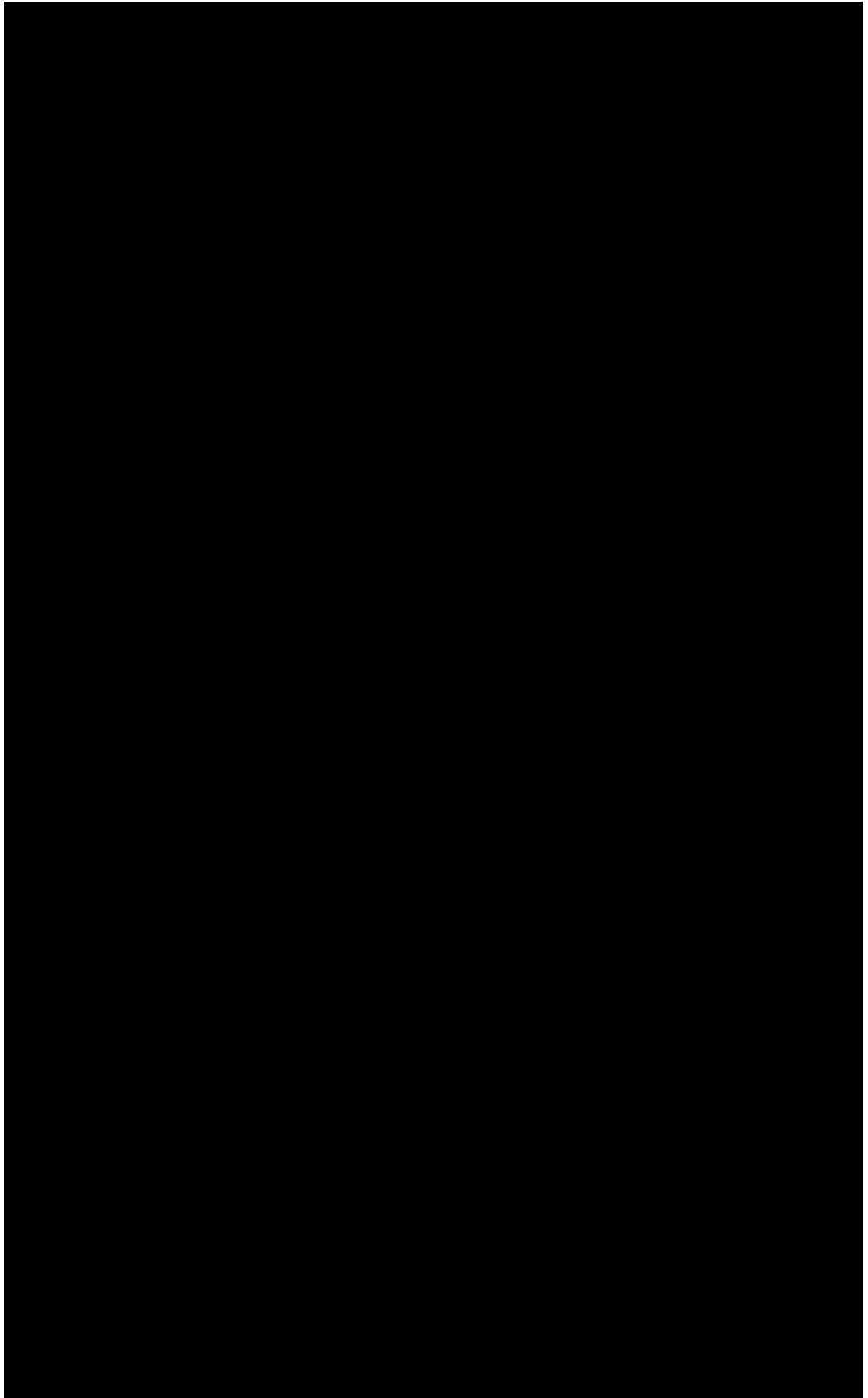
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



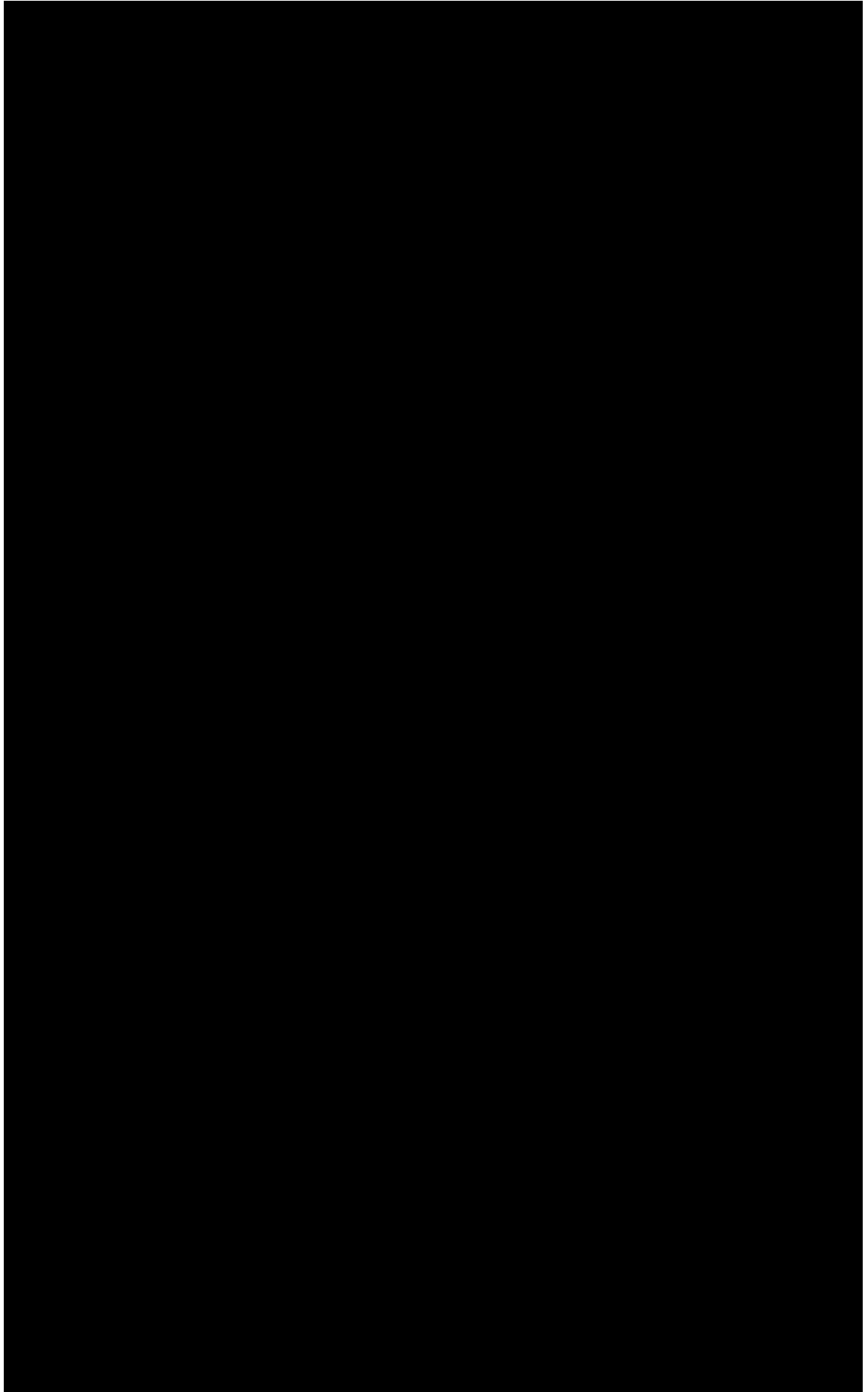
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



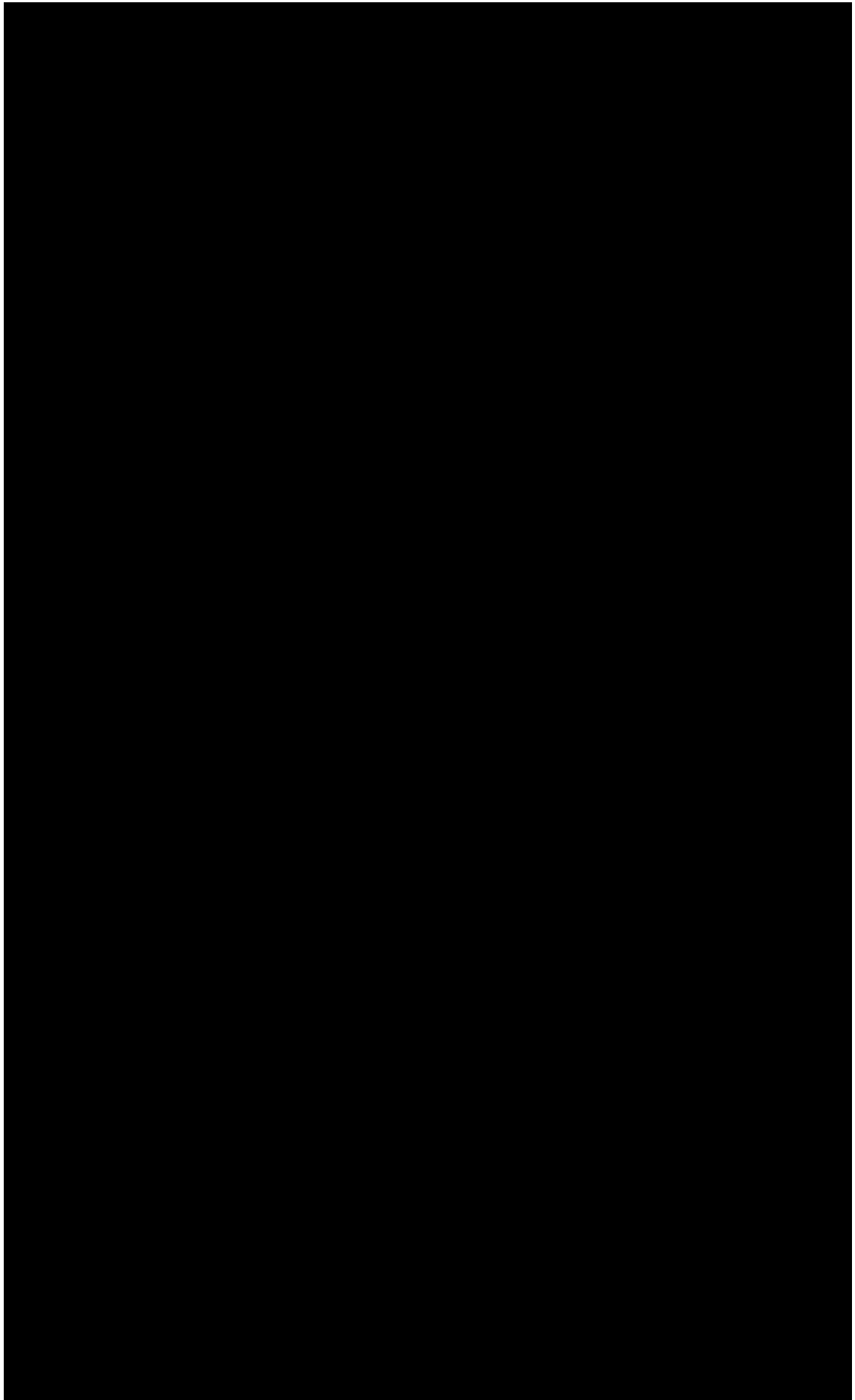
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



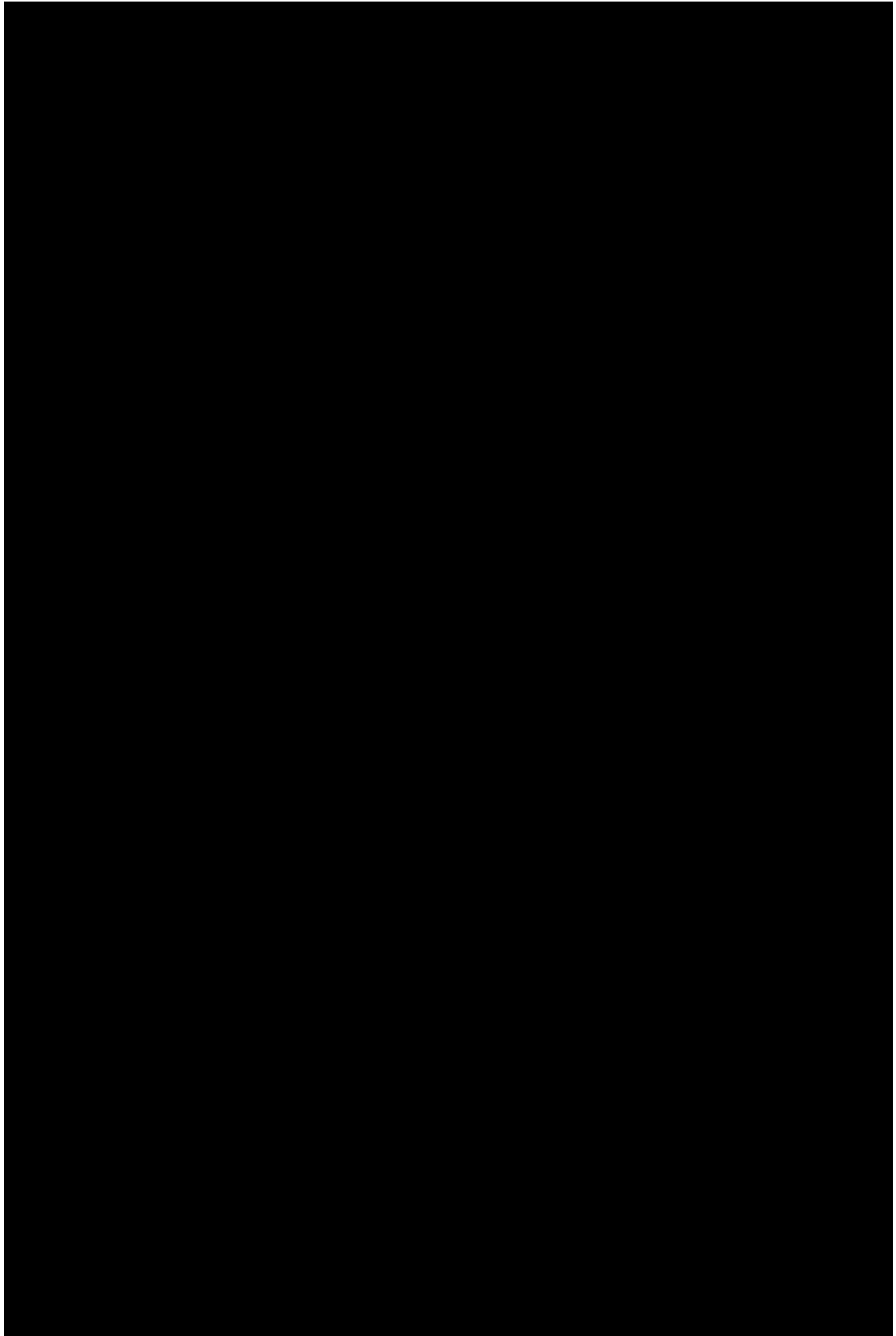
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22



23 Q Okay. Every one of these oxycodone-
24 related products, OxyContin and the other related

1 drugs that I talked about on that drug fact sheet,
2 are purchased by CVS pharmacies from outside
3 vendors, correct?

4 A I don't know about the stores.

5 Q Okay. Well, if they don't get them from
6 the distribution centers, they have to get them
7 from somewhere, right?

8 MR. BUSH: Objection?

9 THE WITNESS: Yes.

10 BY MR. BAKER:

11 Q Okay. And if they don't get them from
12 the CVS distribution centers, they have to get
13 them from somewhere other than CVS, correct?

14 A Yes.

15 MR. BUSH: Objection.

16 BY MR. BAKER:

17 Q That means an outside vendor, correct?

18 A Yes.

19 Q Such as McKesson and Cardinal, correct?

20 A Yes.

21 Q And you know who McKesson and Cardinal
22 are, right?

23 A I do.

24 Q Okay. McKesson and Cardinal were also

1 supplementing the Class IIIs, the hydrocodone
2 combination products that were carried by the CVS
3 pharmacies during the time that you had been
4 employed there, correct?

5 MR. BUSH: Objection.

6 THE WITNESS: I don't know what deals
7 the stores had or what contracts they had with the
8 vendors. I know those vendors supplied.

9 BY MR. BAKER:

10 Q Okay. "Those vendors," meaning outside
11 vendors, helped supply CVS pharmacies with the
12 hydrocodone combination products that they sold at
13 those CVS pharmacies, correct? You know that,
14 right?

15 A Yes.

16 Q And none of the monitoring that you did
17 through the suspicious order monitoring system
18 monitored the quantity of those outside vendors'
19 sales to those pharmacies, correct?

20 MR. BUSH: Objection.

21 THE WITNESS: That wasn't on the SOM.

22 BY MR. BAKER:

23 Q Okay. So is the answer "correct"?

24 A Yes.

1 Q Okay. In terms of suspicious order
2 monitoring, however much was sold by outside
3 vendors to those pharmacies, that's something that
4 CVS did not monitor as far as you know; is that
5 correct?

6 MR. BUSH: Objection.

7 THE WITNESS: I don't know that because
8 that information is on the field's programs.

9 BY MR. BAKER:

10 Q Yeah, but you did not monitor that in
11 the suspicious order monitoring system, correct?

12 MR. BUSH: Objection.

13 THE WITNESS: I did not monitor it.

14 BY MR. BAKER:

15 Q Okay. And you're unaware of anybody
16 else monitoring it within the suspicious order
17 monitoring system, correct?

18 MR. BUSH: Objection.

19 THE WITNESS: I wouldn't know of anybody
20 else in the field monitoring.

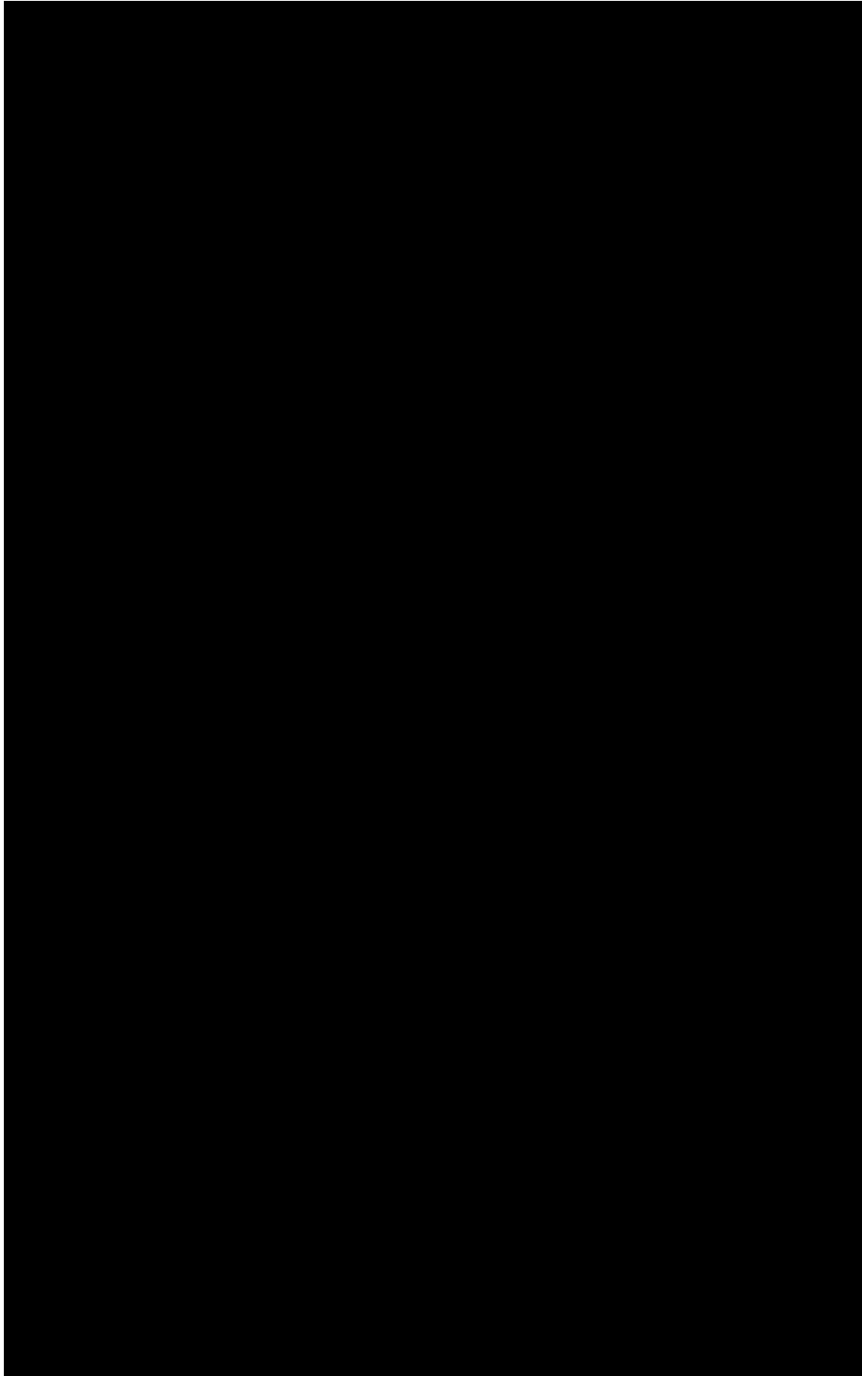
21

22

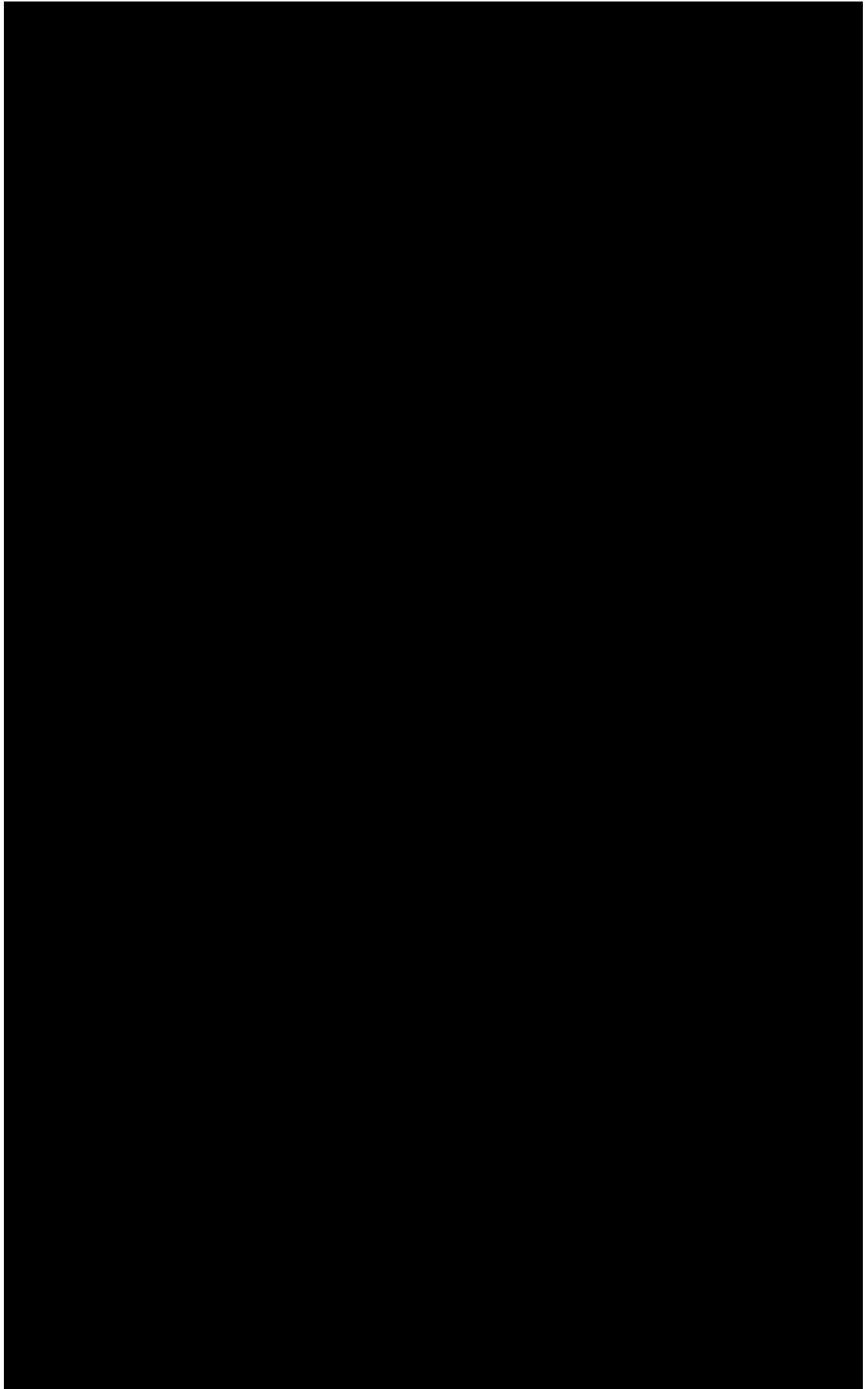
23

24

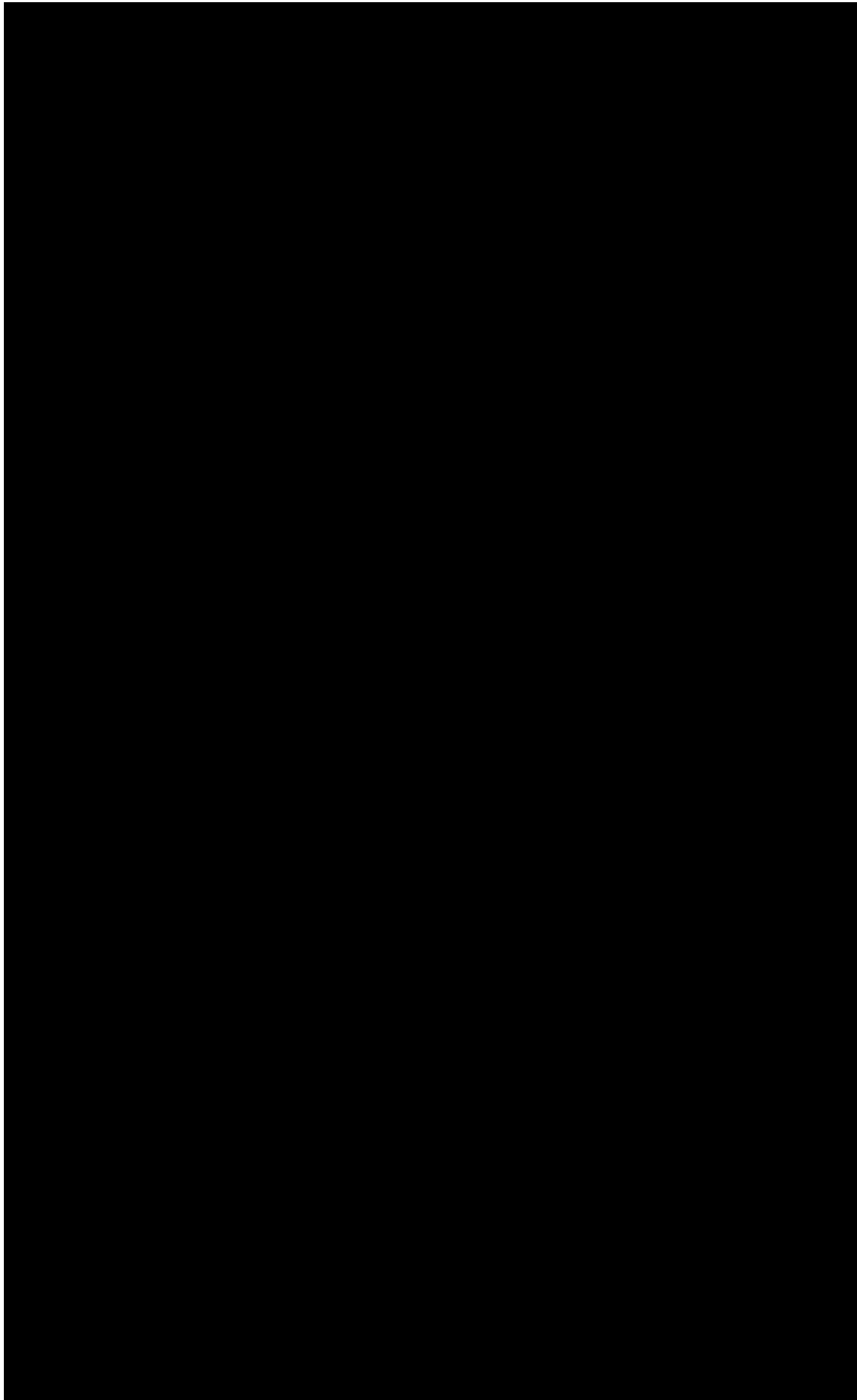
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



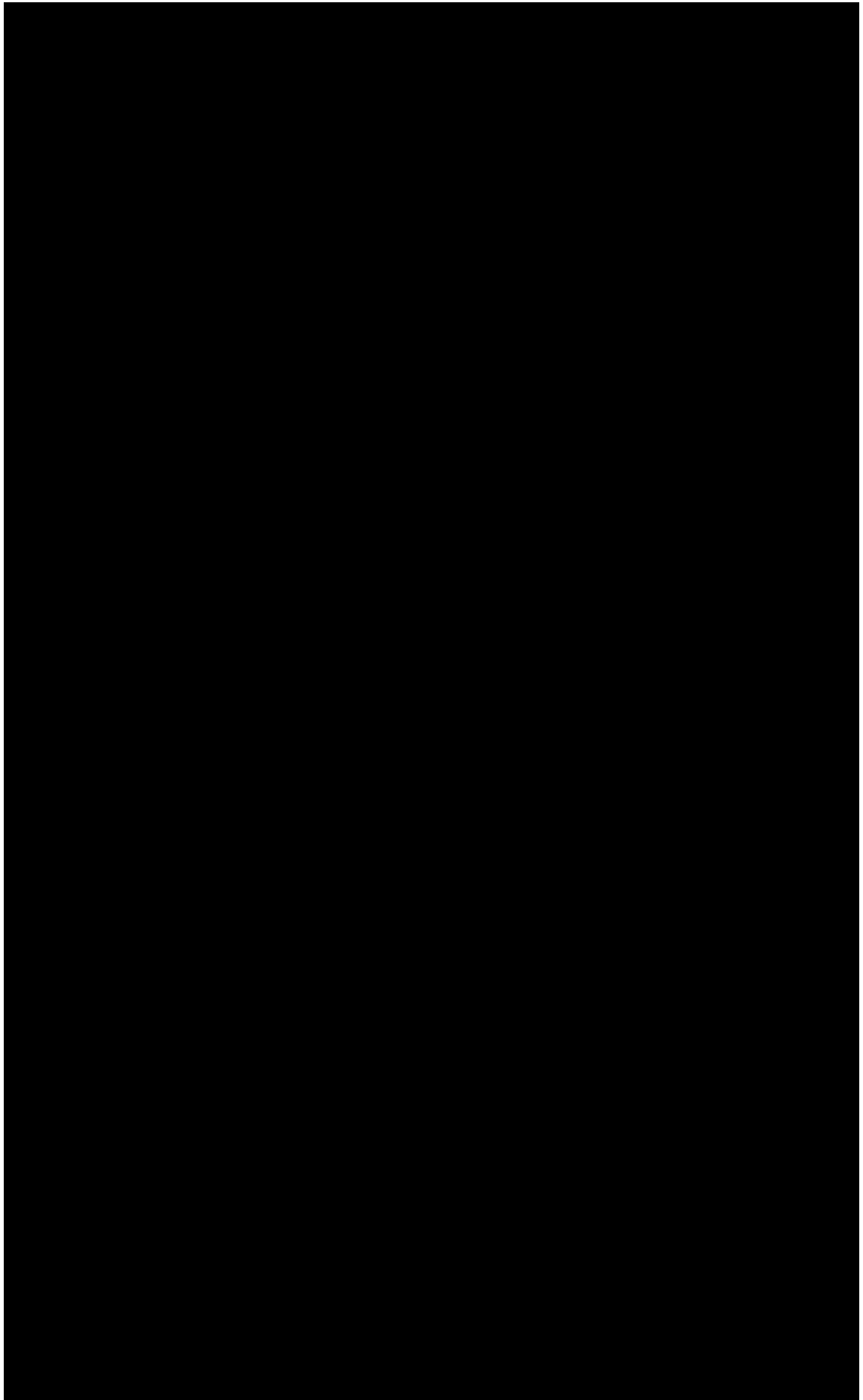
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



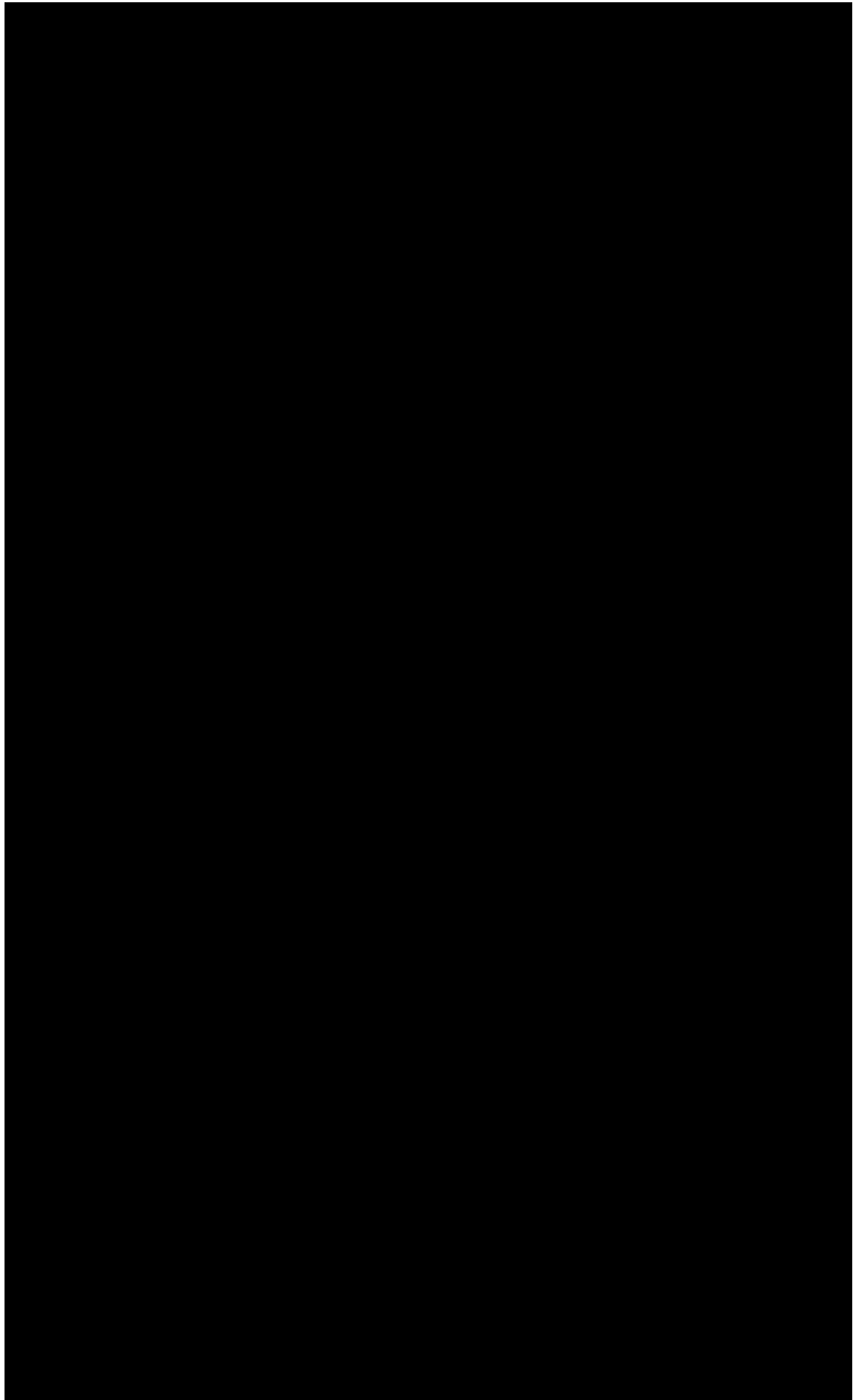
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



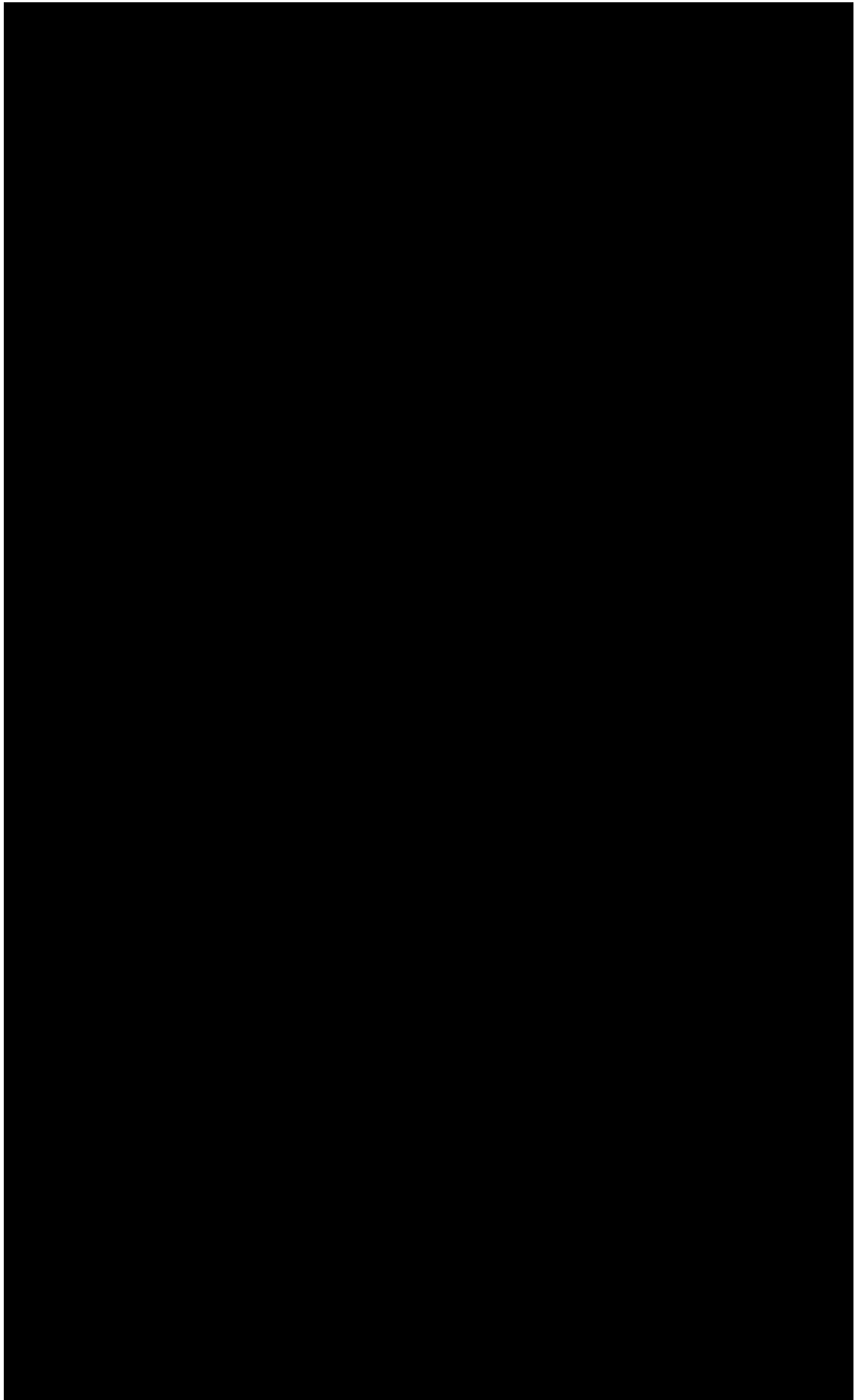
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



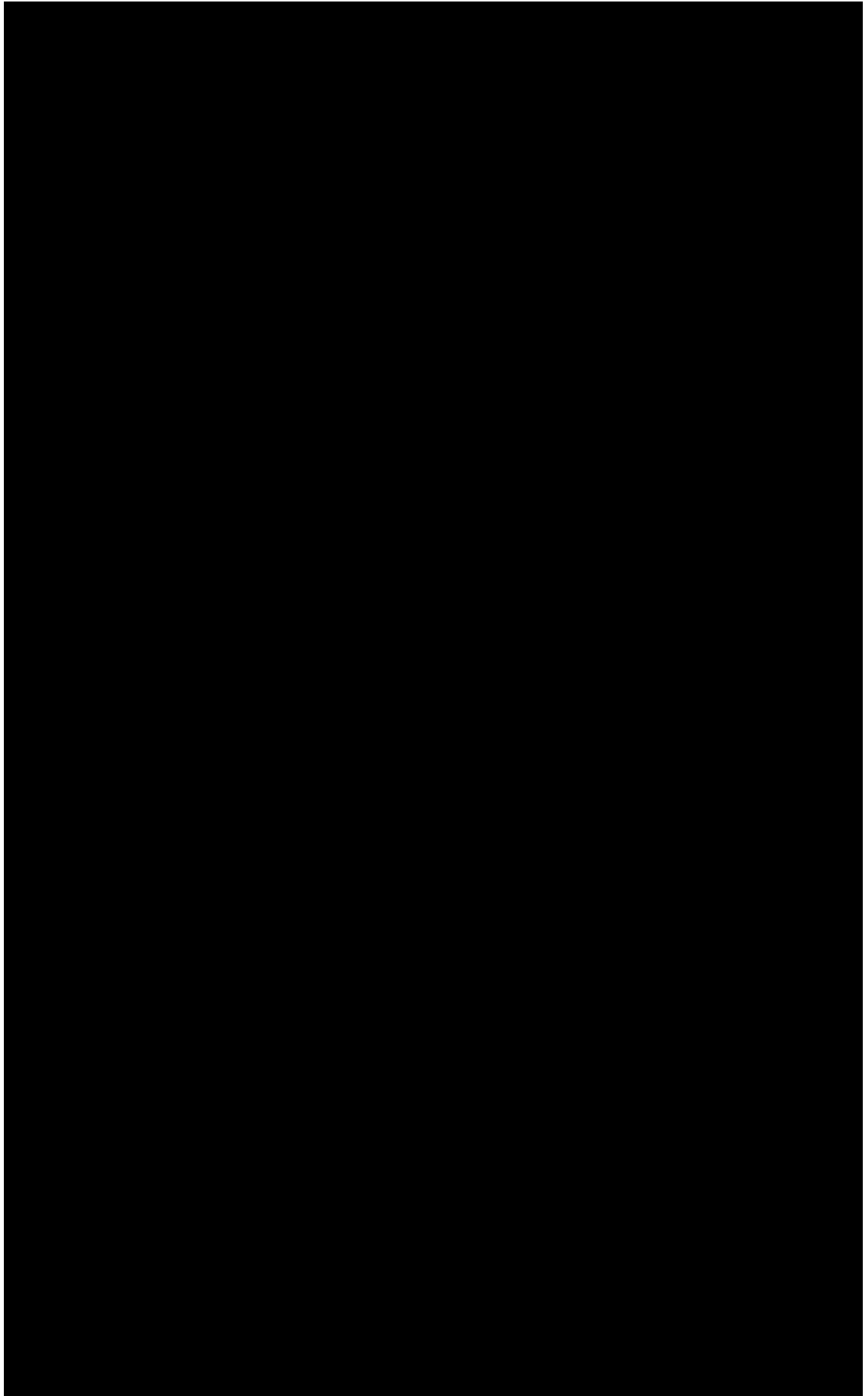
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1

2

3

4

5

6

7 Q Okay. Where is the paperwork and what
8 do we call the paperwork that proves you did
9 exactly that, that you referred every single one
10 of the hydrocodone combination product orders that
11 appeared on the IRR out for further investigation?
12 What's the name of the document? Where is it so I
13 can go get it?

14 MR. BUSH: Objection. Counsel, you know
15 that the production of documents in this case has
16 covered all of the documents that are available,
17 and they may not be available. So...

18 MR. BAKER: I'm going to ask counsel to
19 just object to form and to not give speaking
20 objections.

21 BY MR. BAKER:

22 Q Where is the documents?

23 A The documents are gone.

24 Q The documents are gone. Okay. Who

1 destroyed those documents?

2 A I'm guessing when they hit their
3 three-year expiration date.

4 Q Who destroyed those documents, CVS?

5 MR. BUSH: Objection. Let him finish
6 his answer, please, Bill.

7 THE WITNESS: Don't know.

8 BY MR. BAKER:

9 Q Okay. CVS played a role in destroying
10 those documents, correct?

11 MR. BUSH: Objection.

12 THE WITNESS: When they hit their
13 three-year expiration date.

14 BY MR. BAKER:

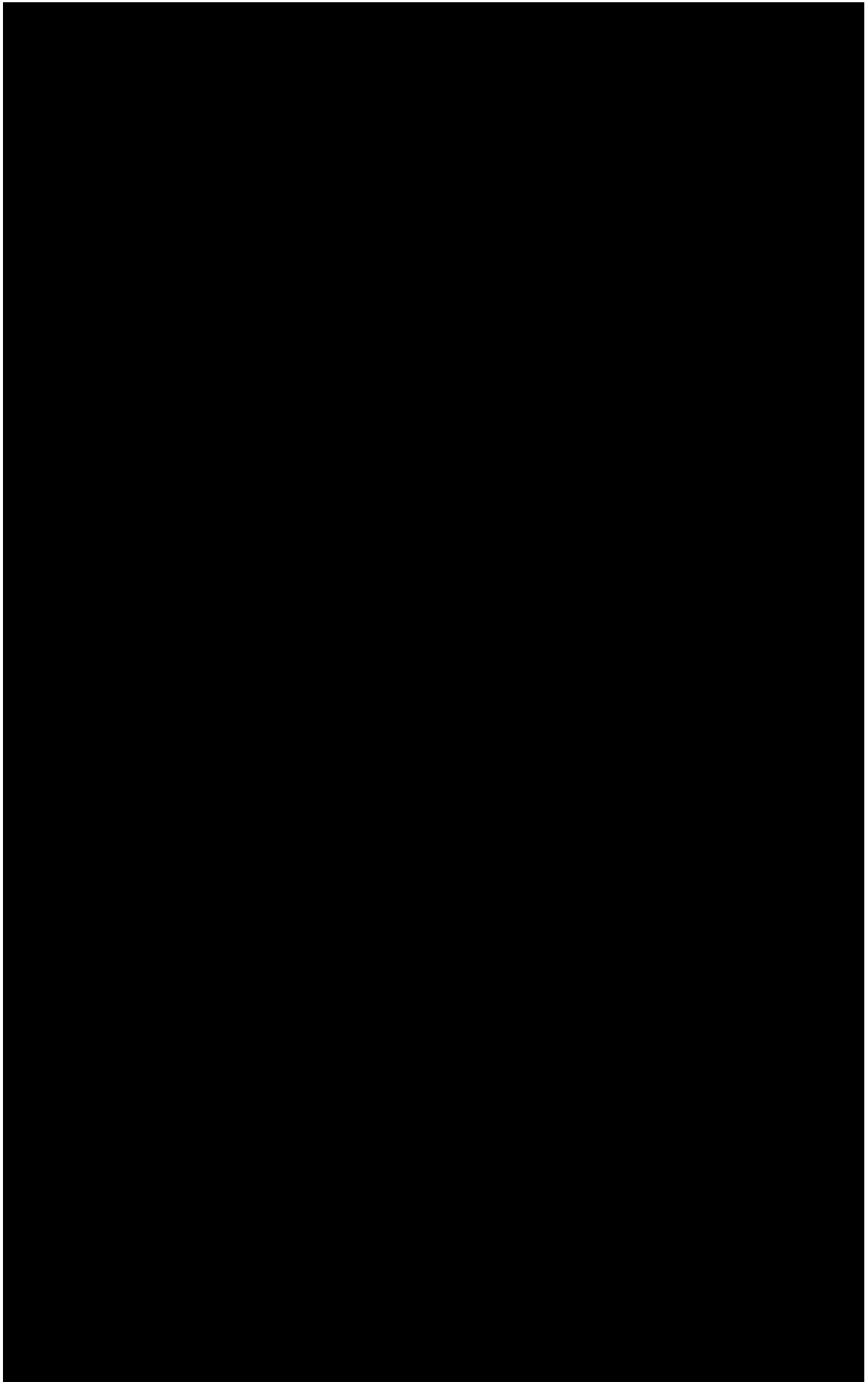
15 Q Okay. So if we were to ask you for --
16 for paper proof of any document that proves that
17 you referred an order off the IRR to a VIPER field
18 analyst, your answer is that there is no such
19 paper because it's been destroyed; is that correct
20 or not?

21 A I could not find any. Believe me, I
22 tried.

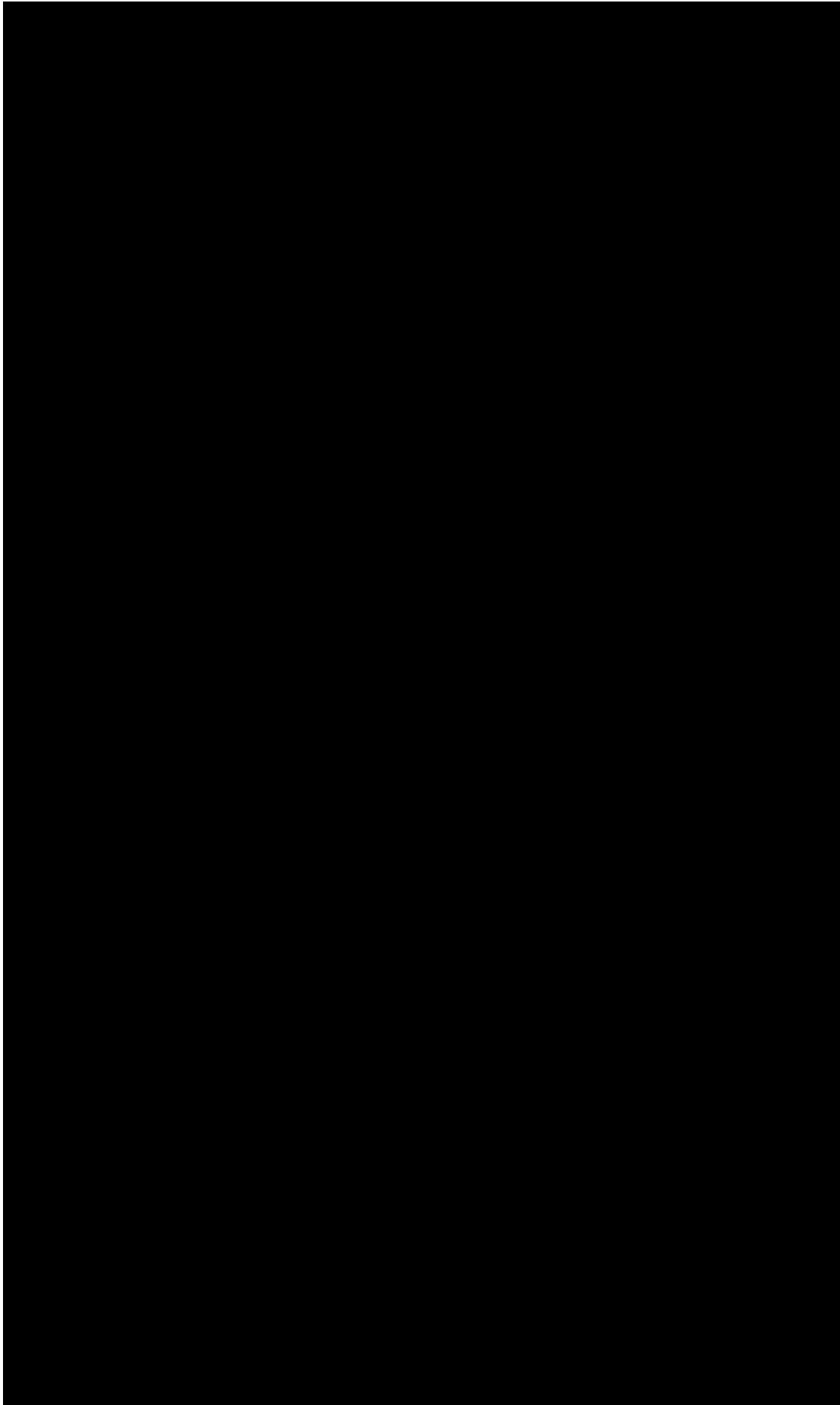
23

24

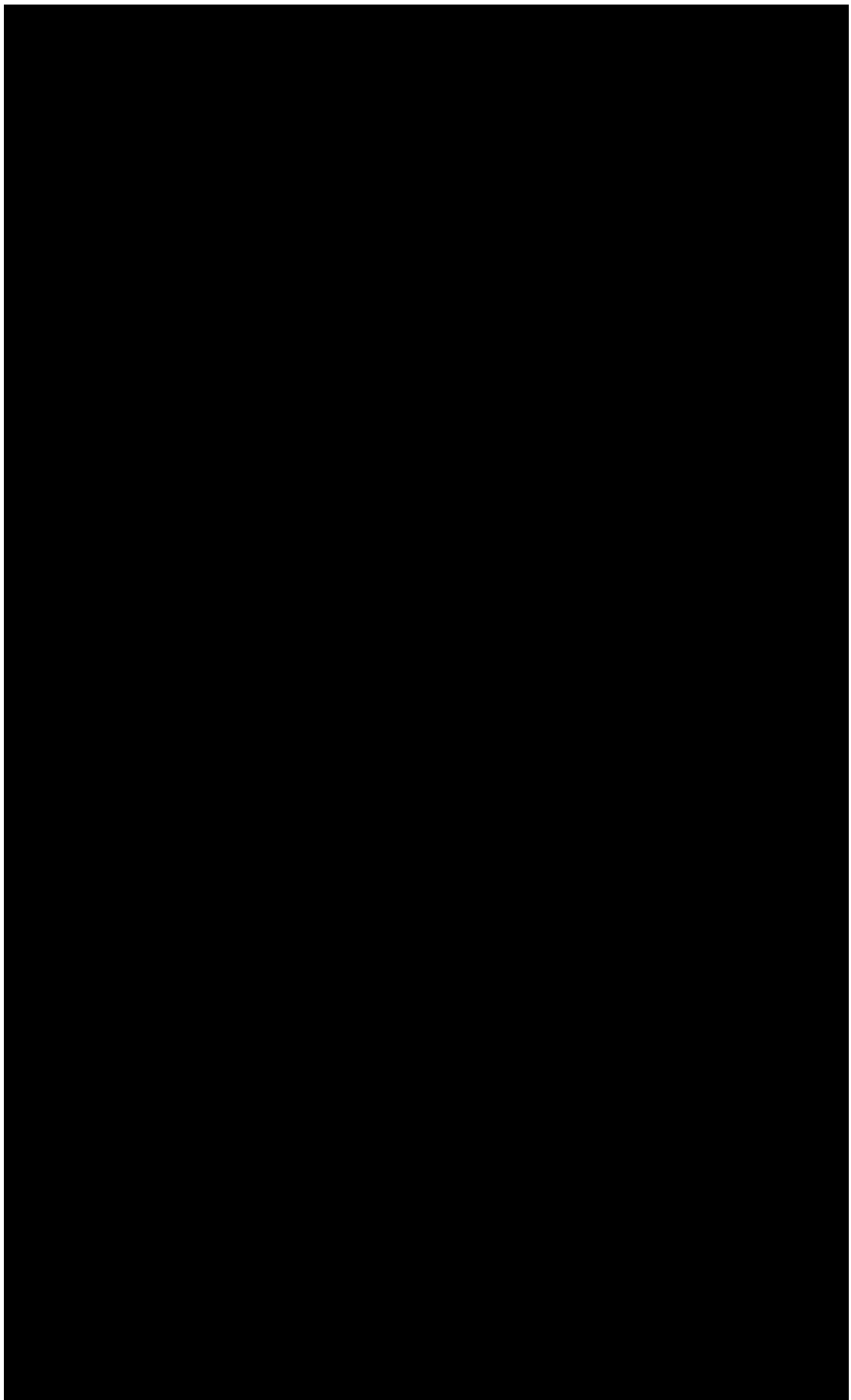
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



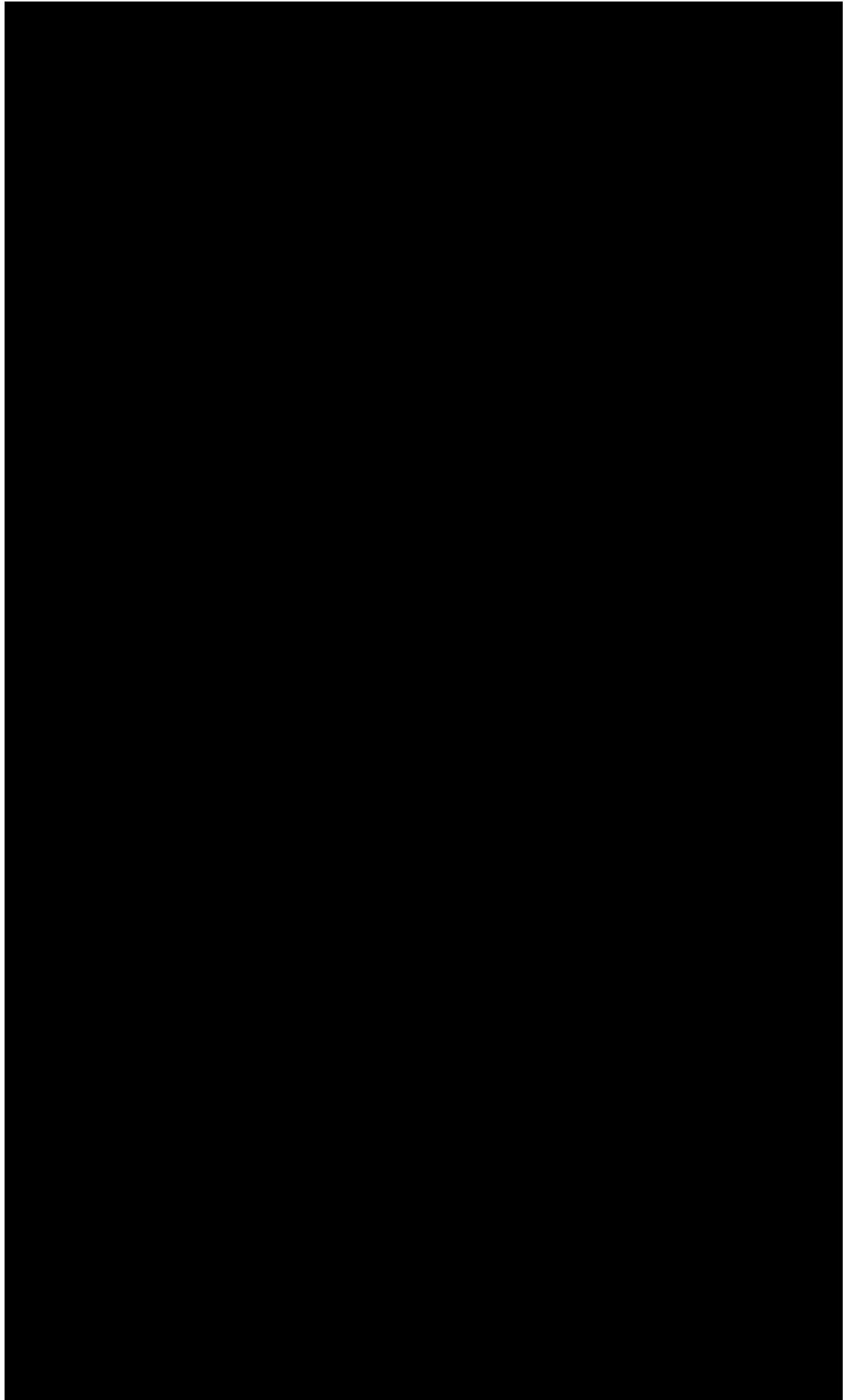
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



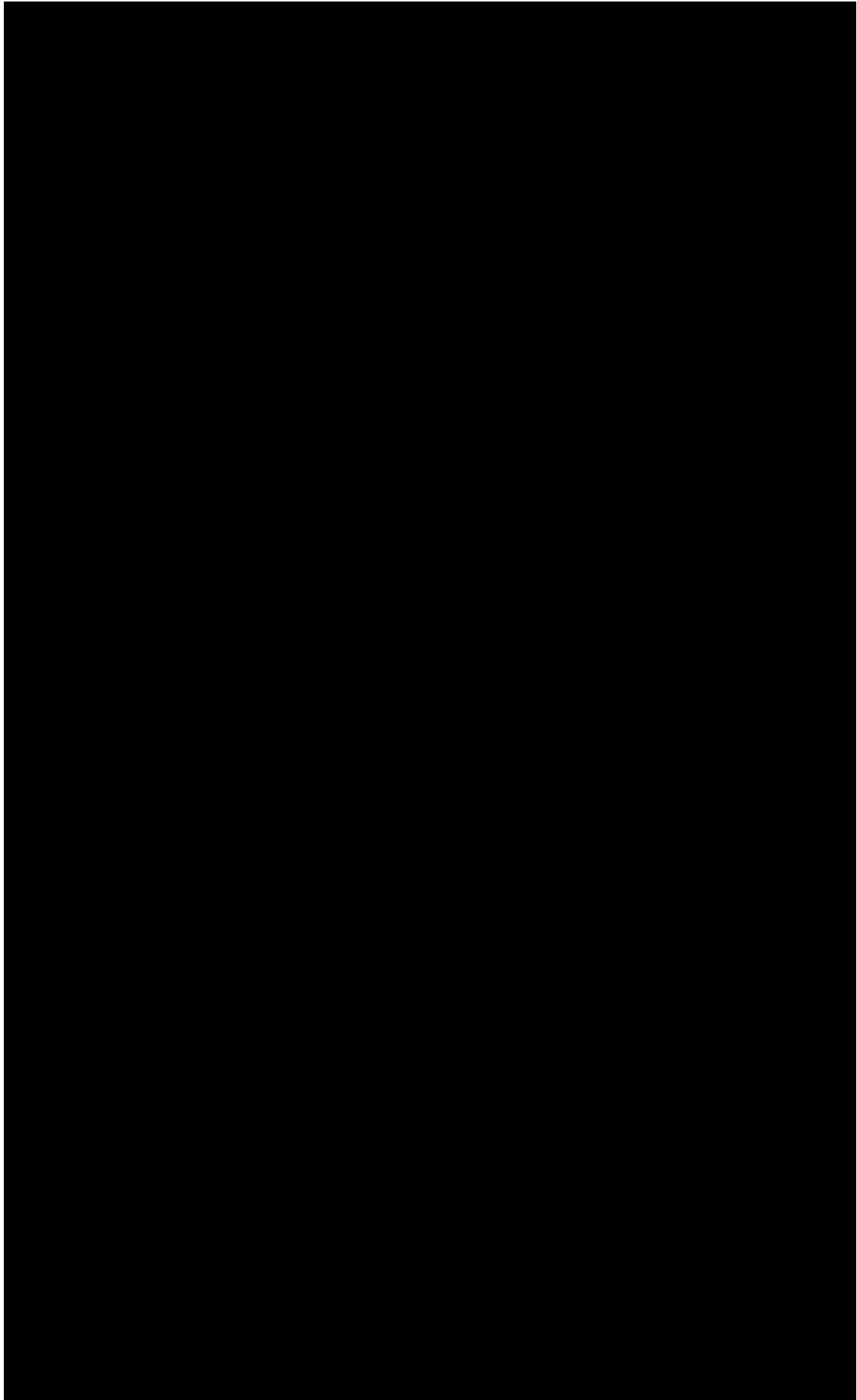
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



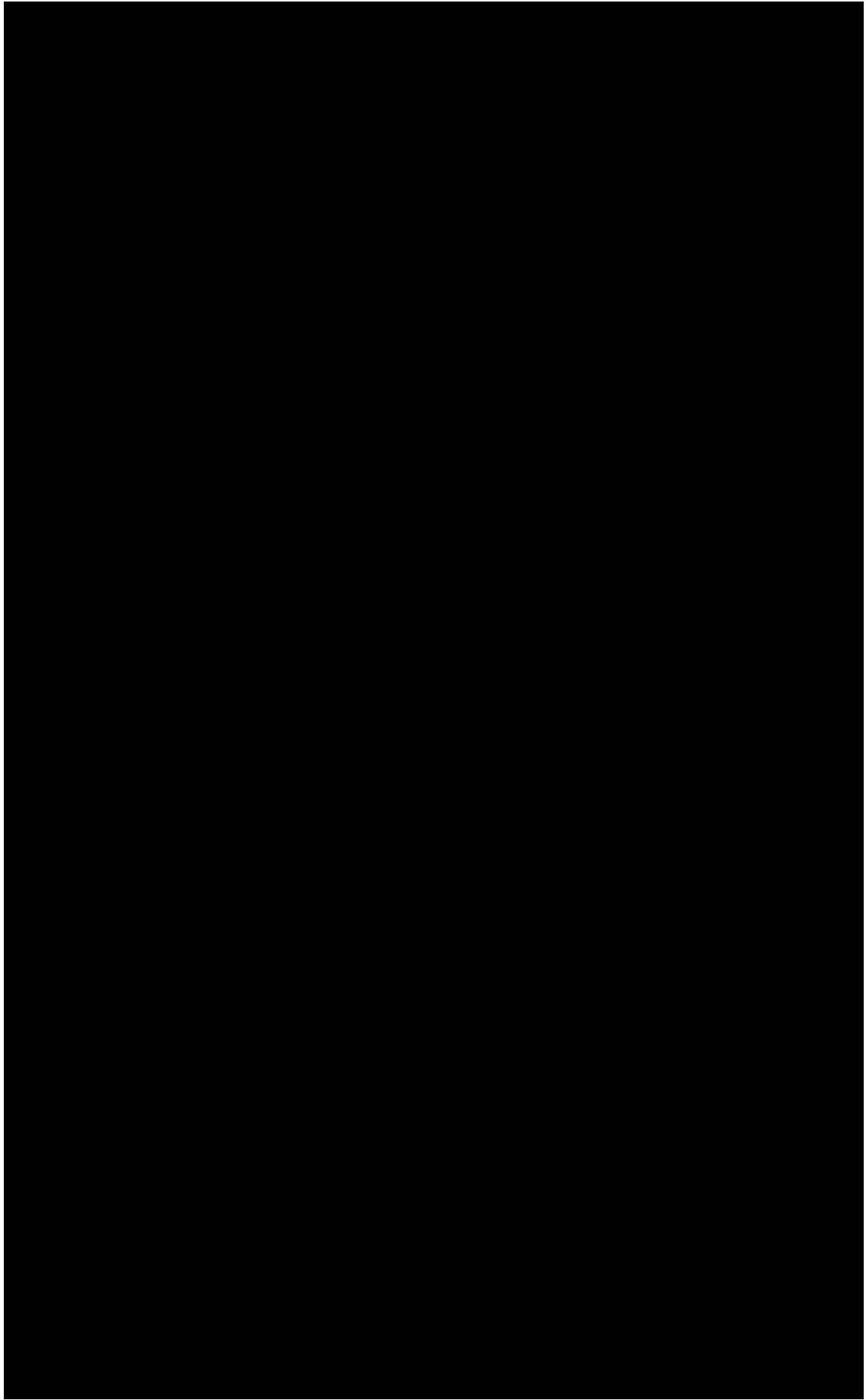
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



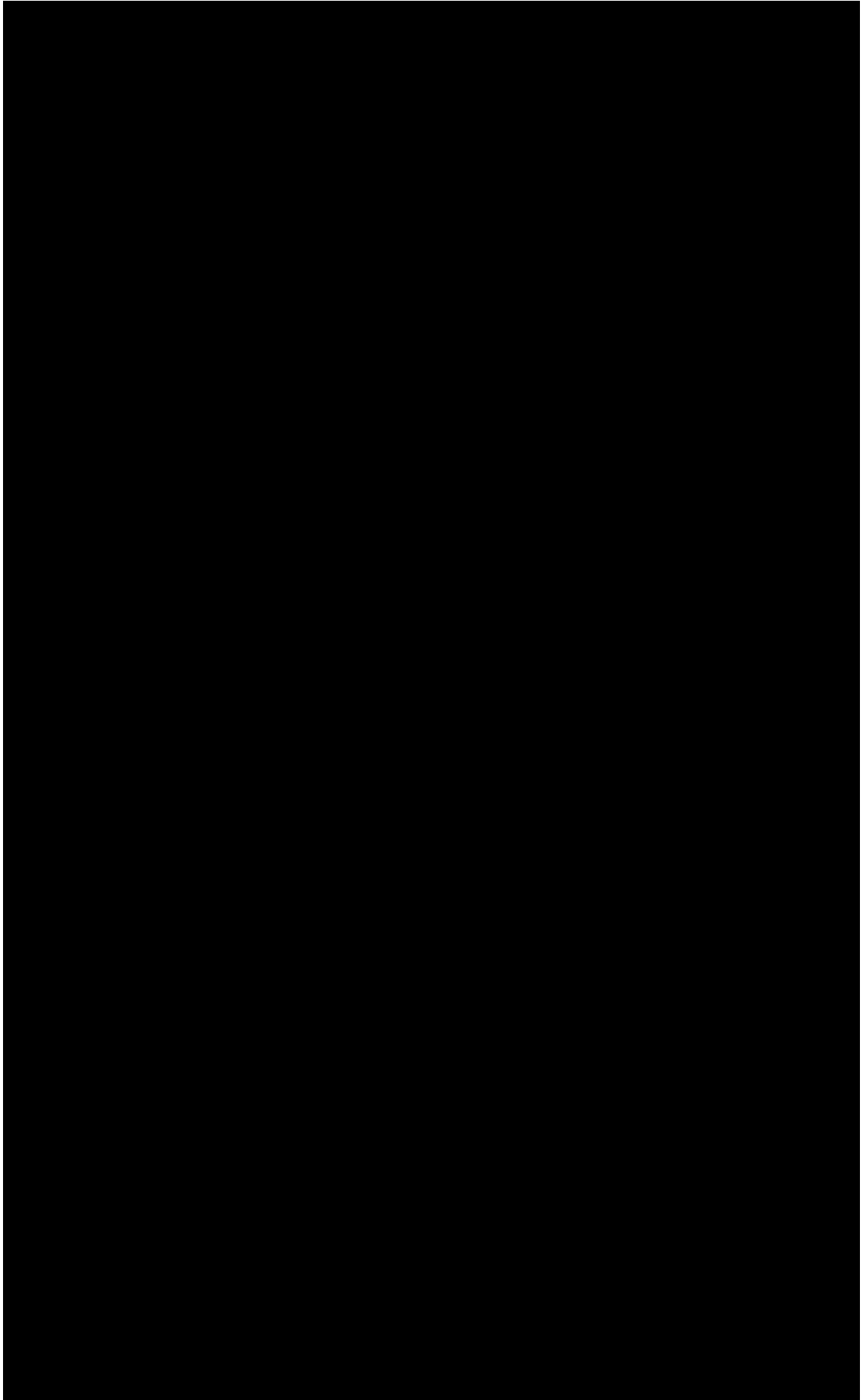
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



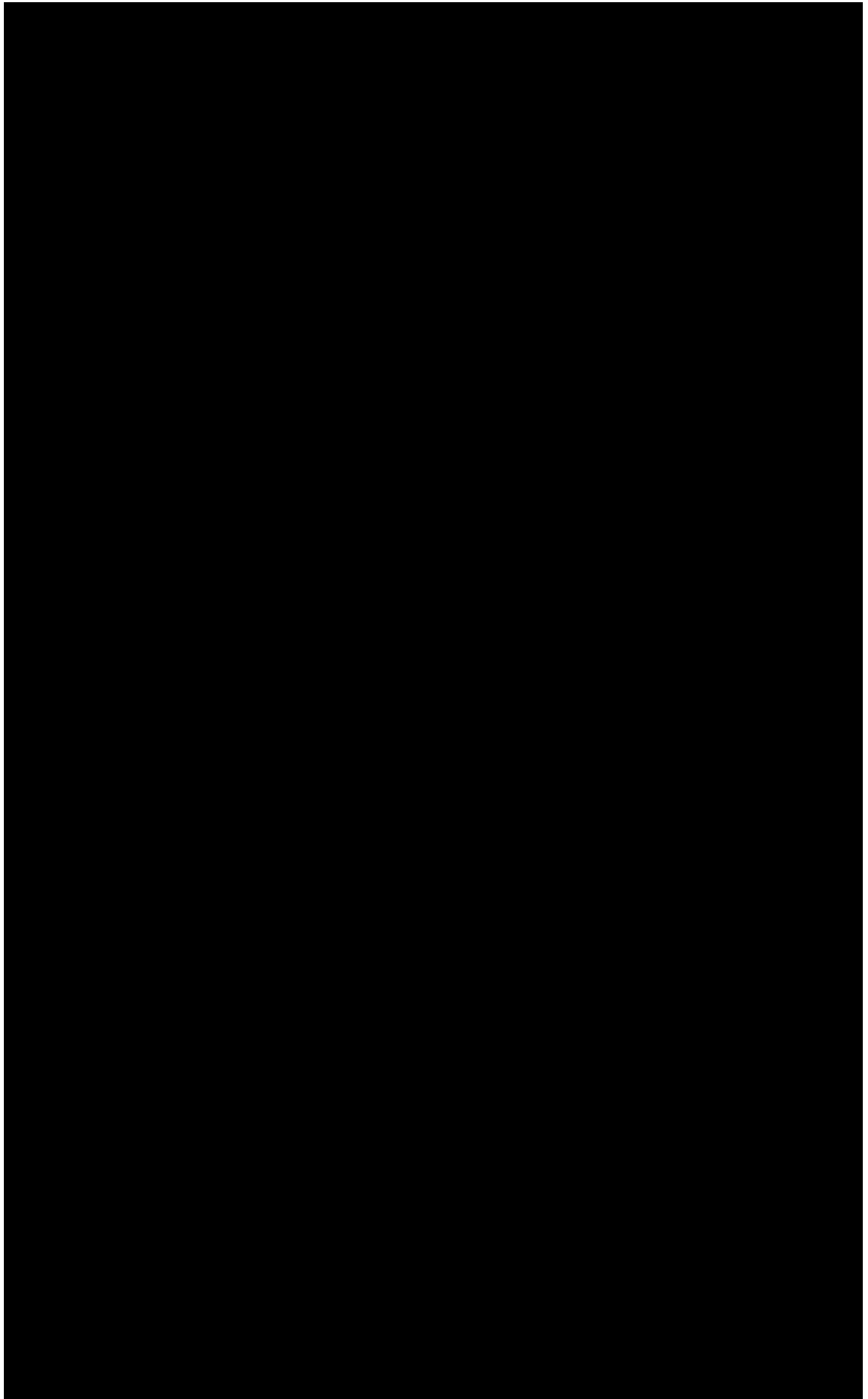
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



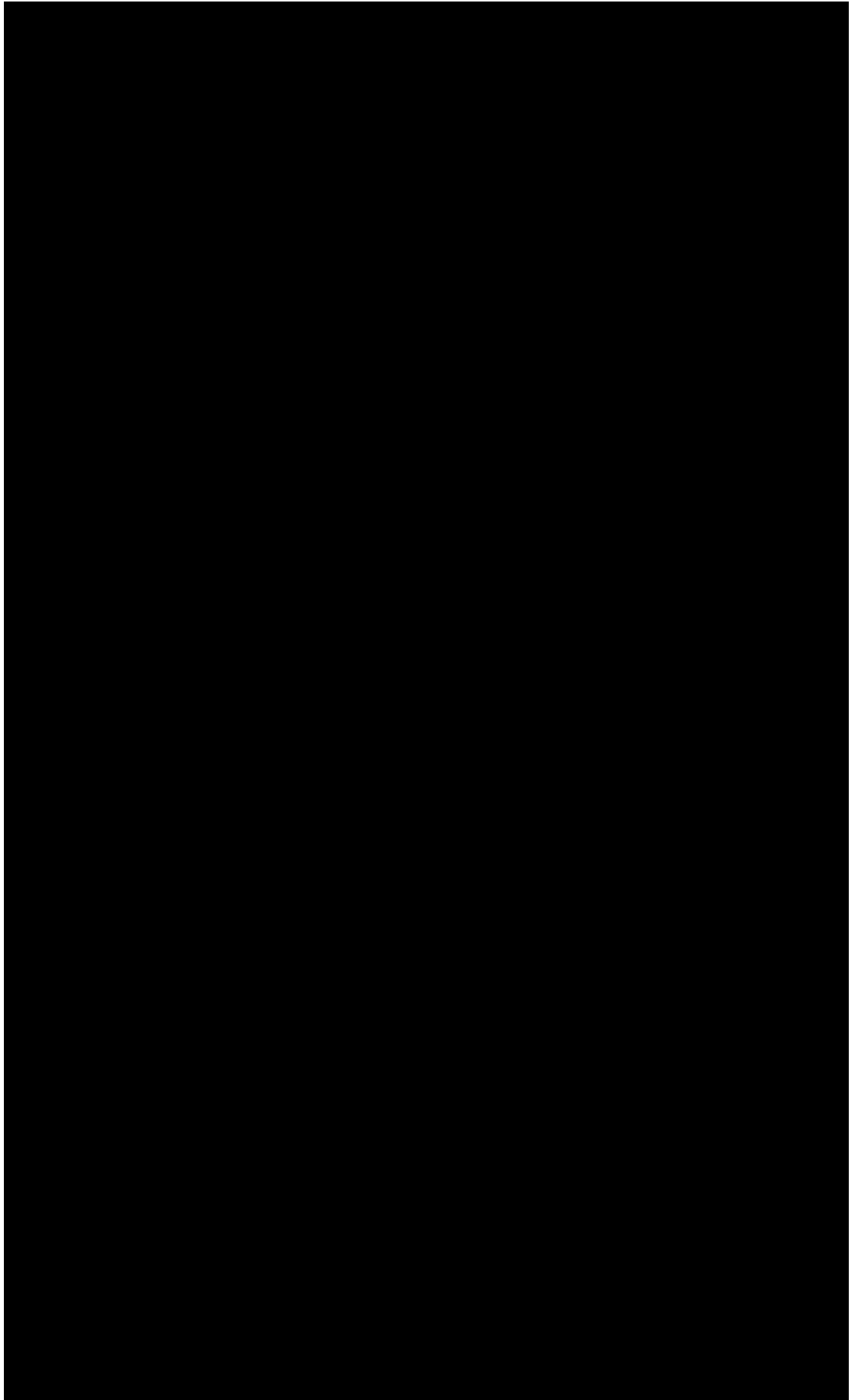
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



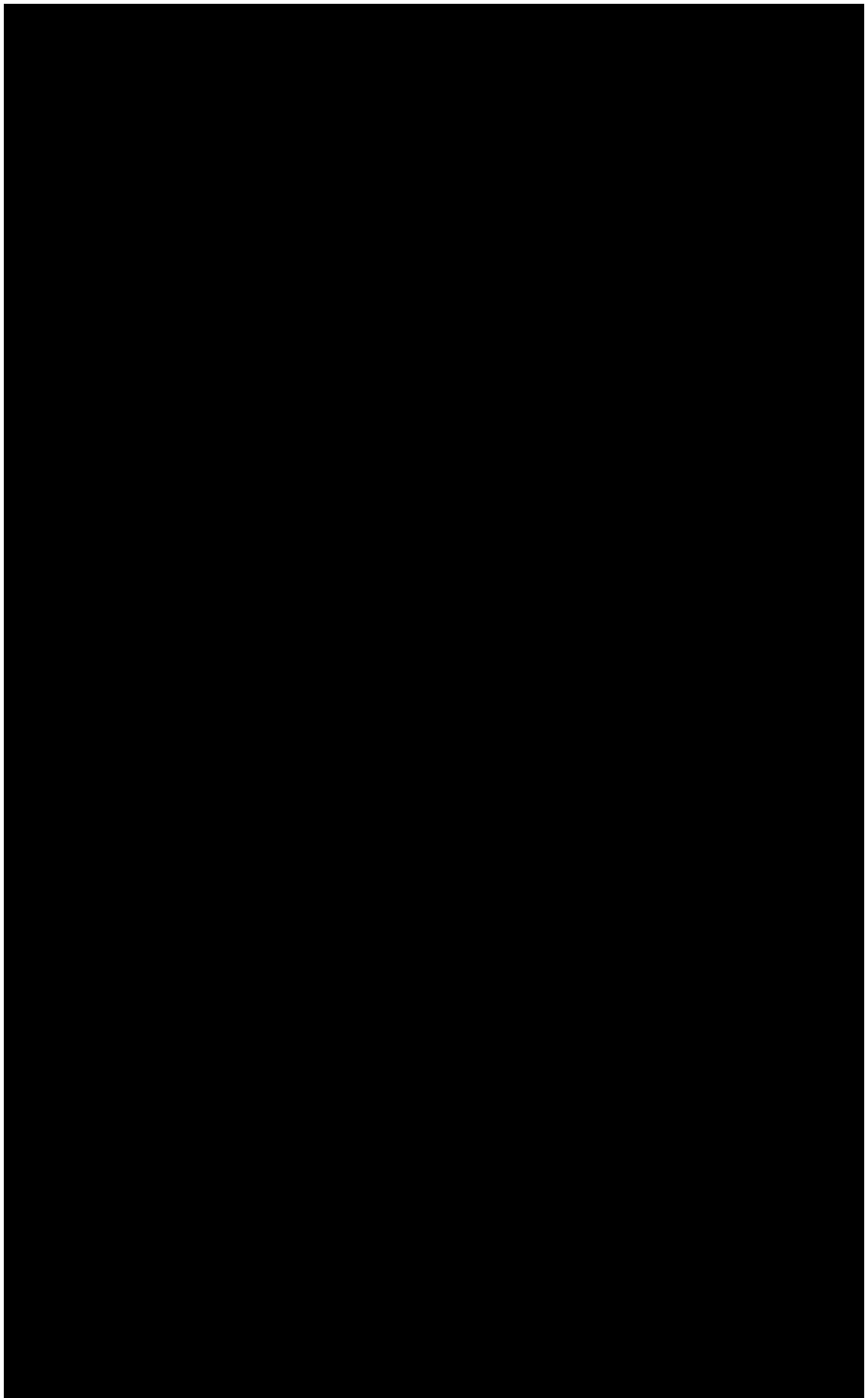
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



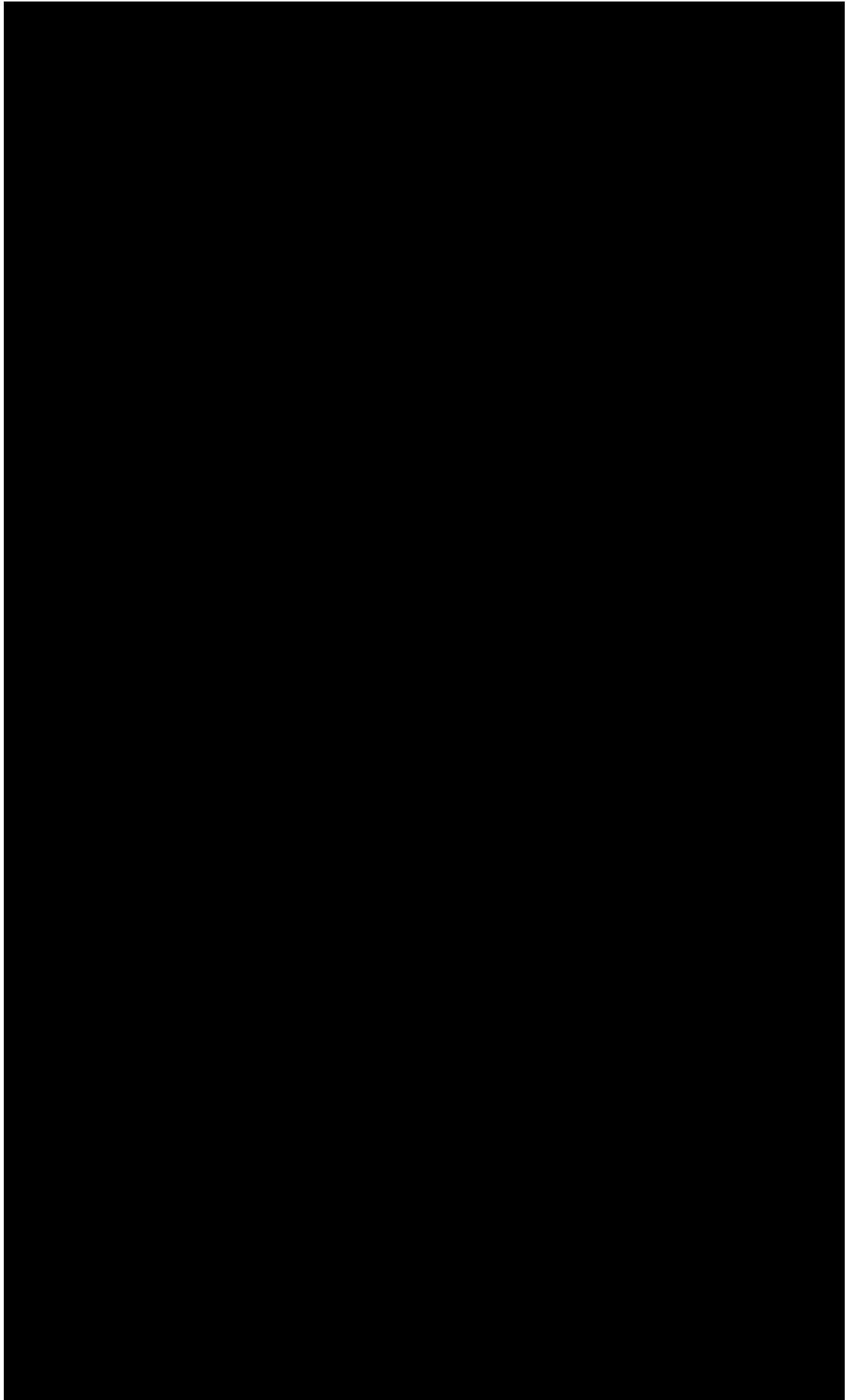
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



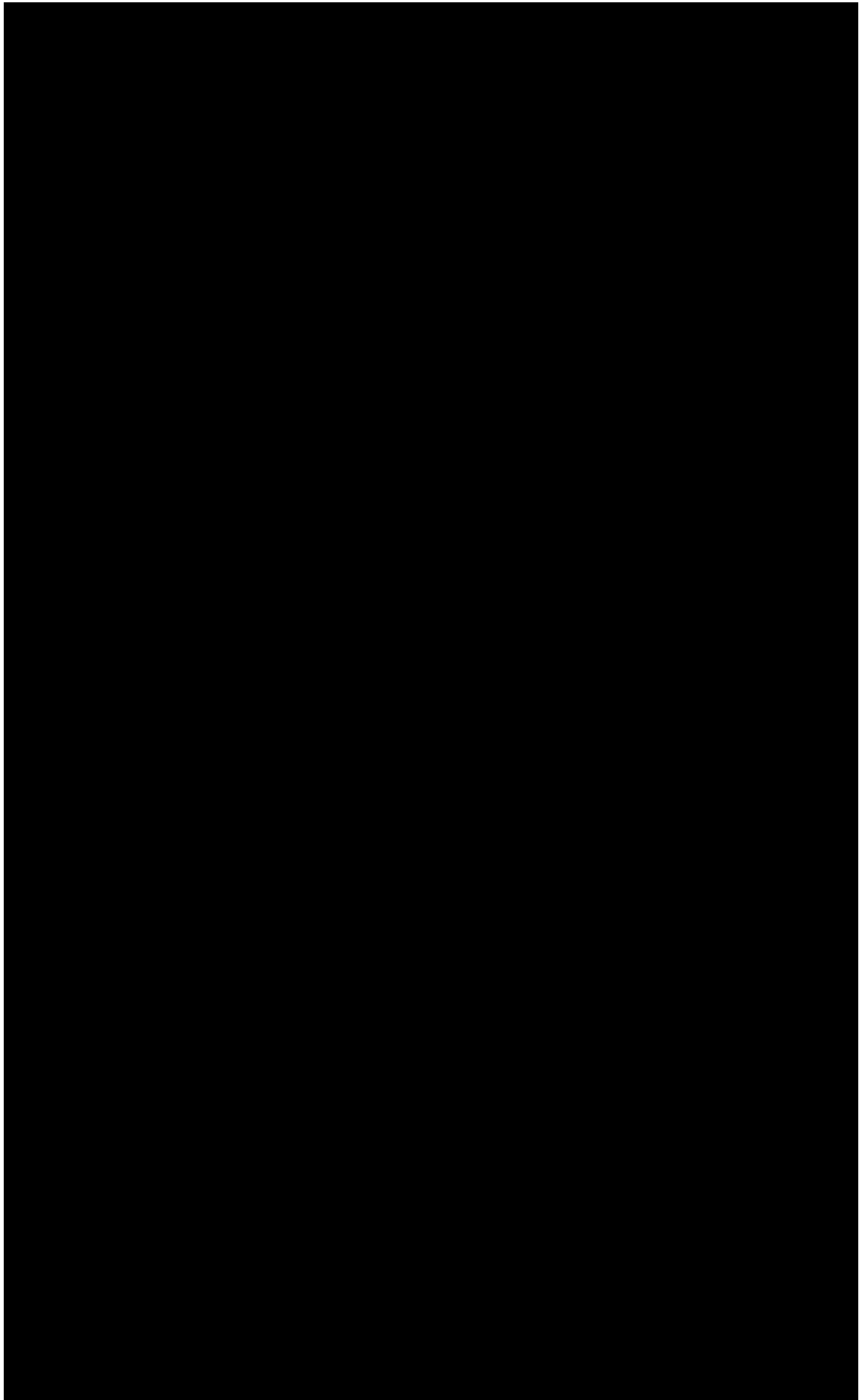
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



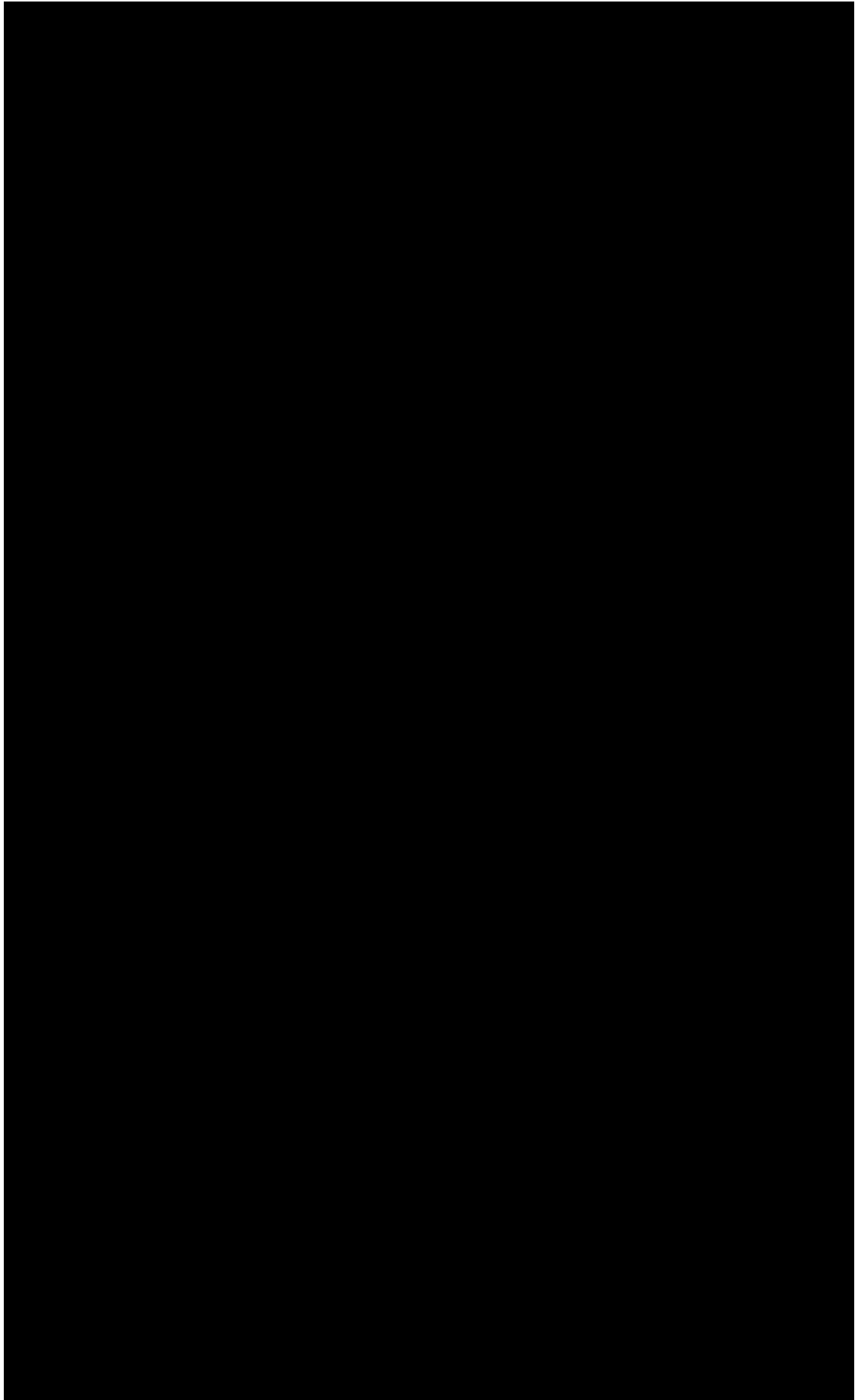
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



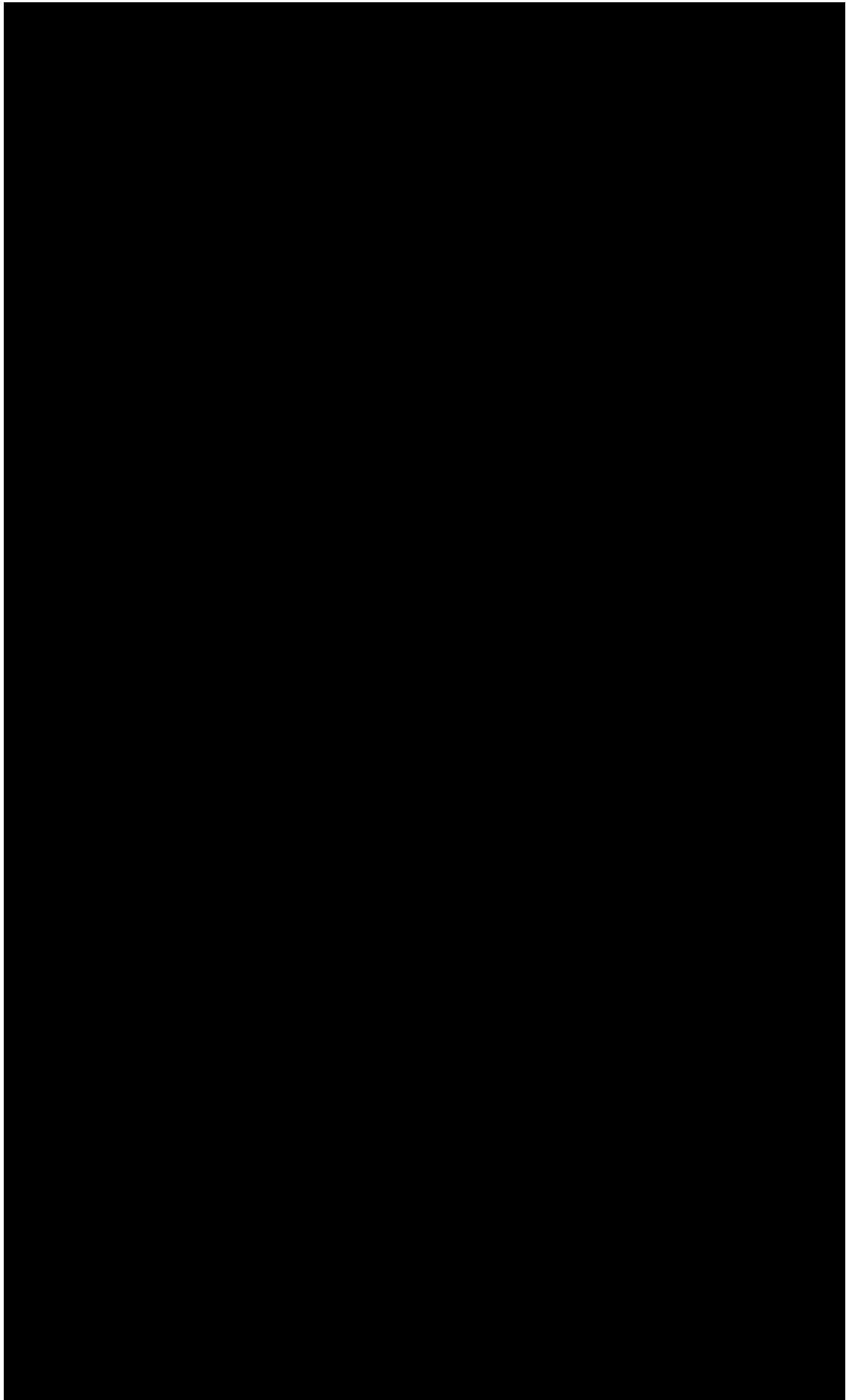
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



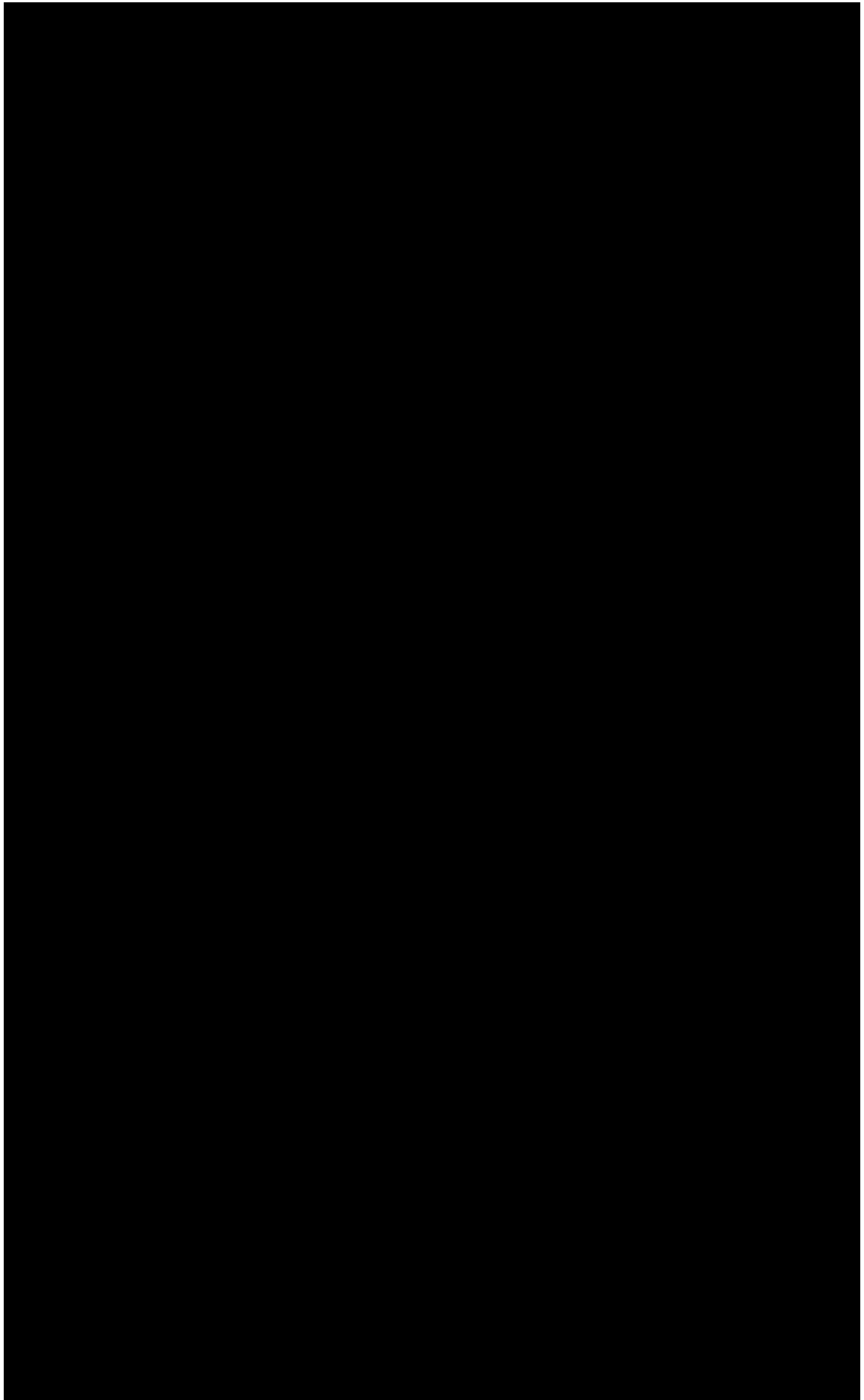
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



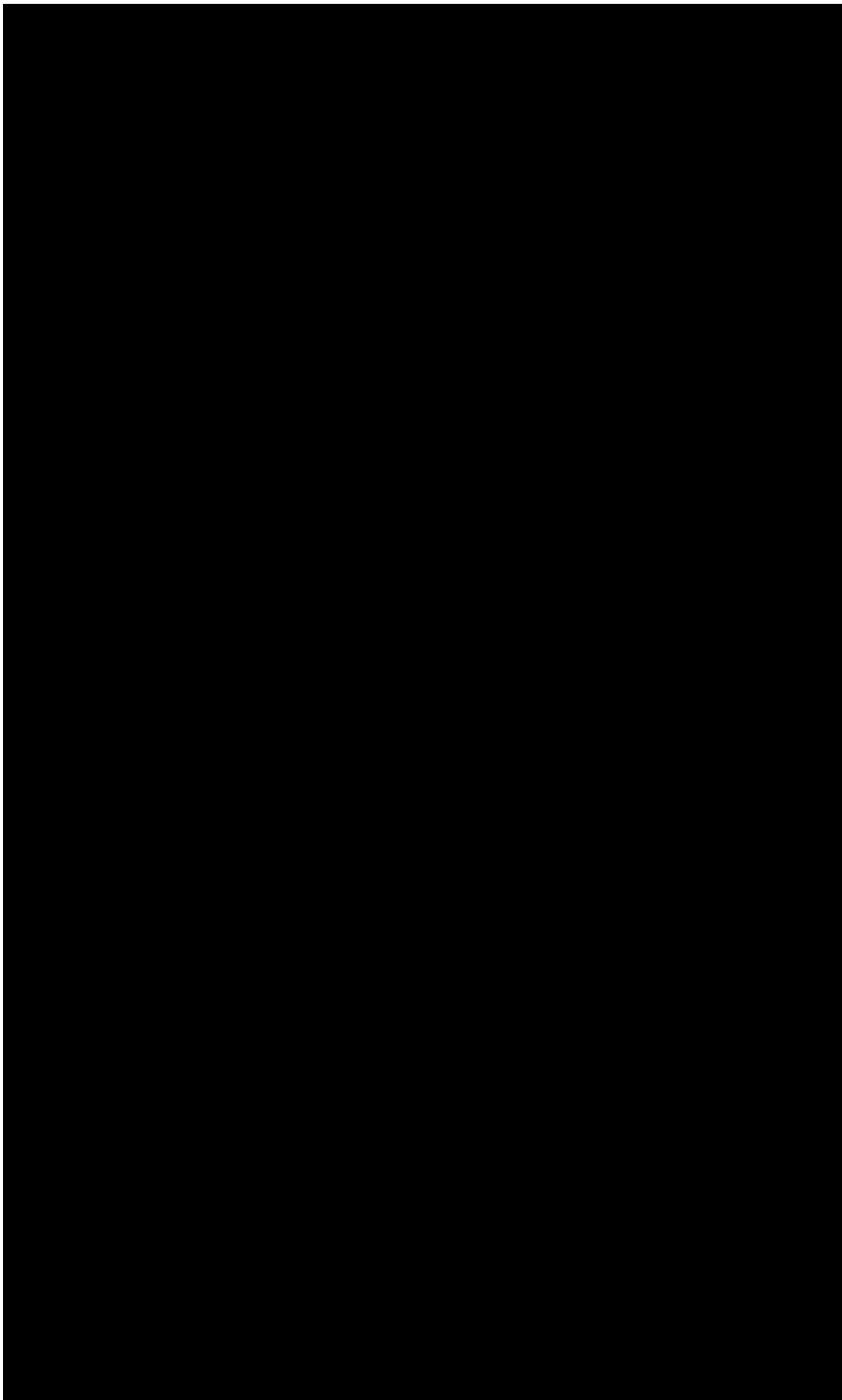
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



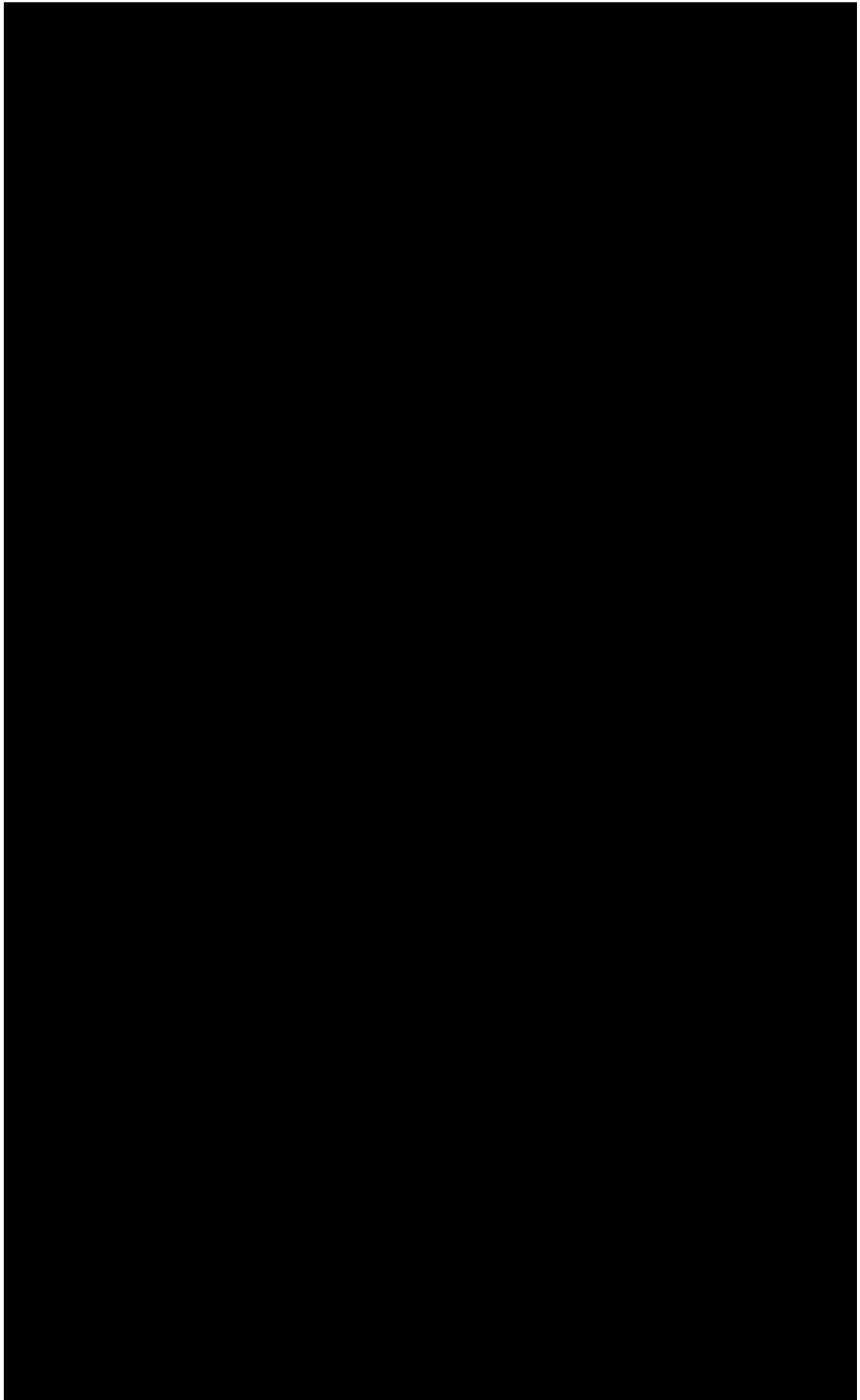
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



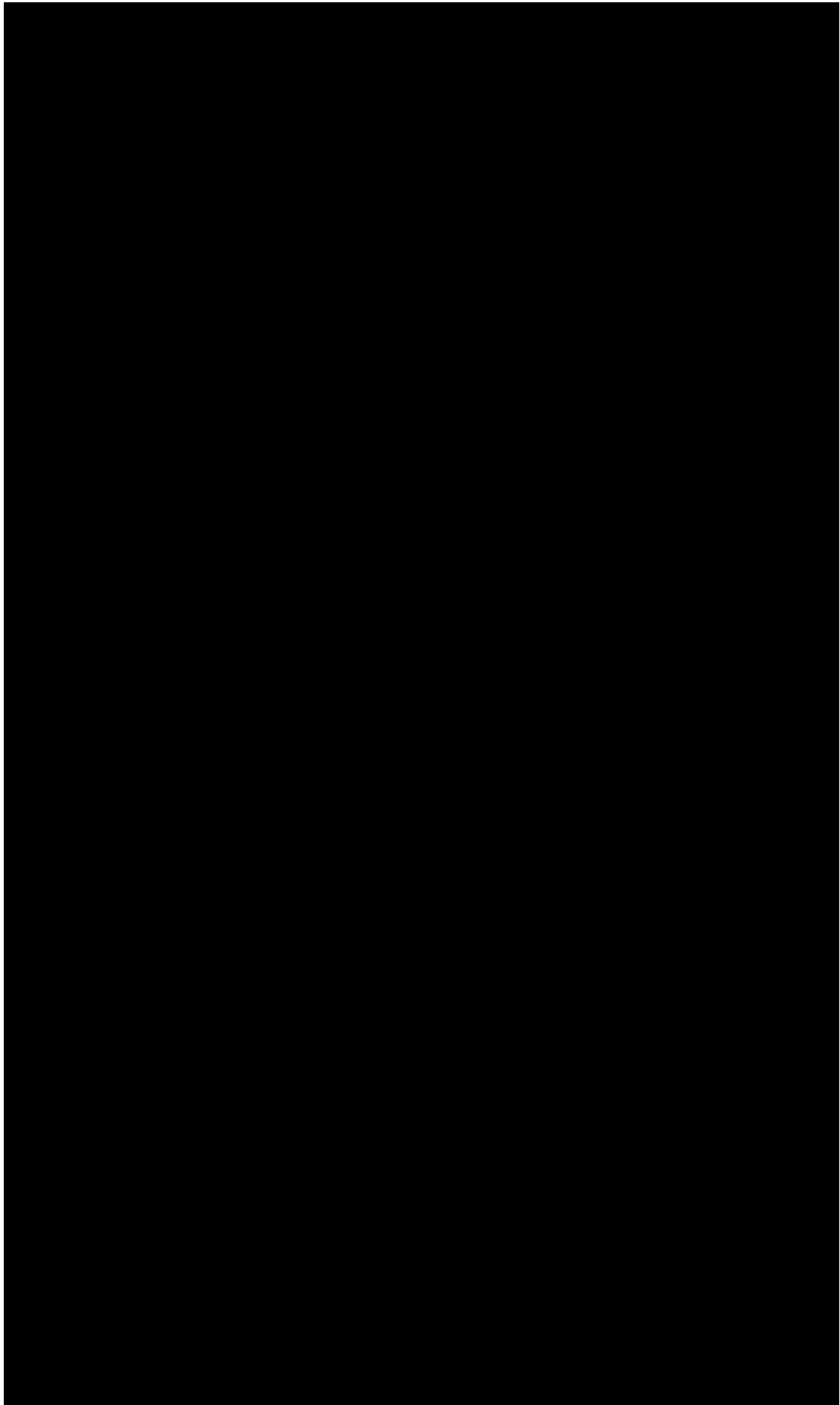
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



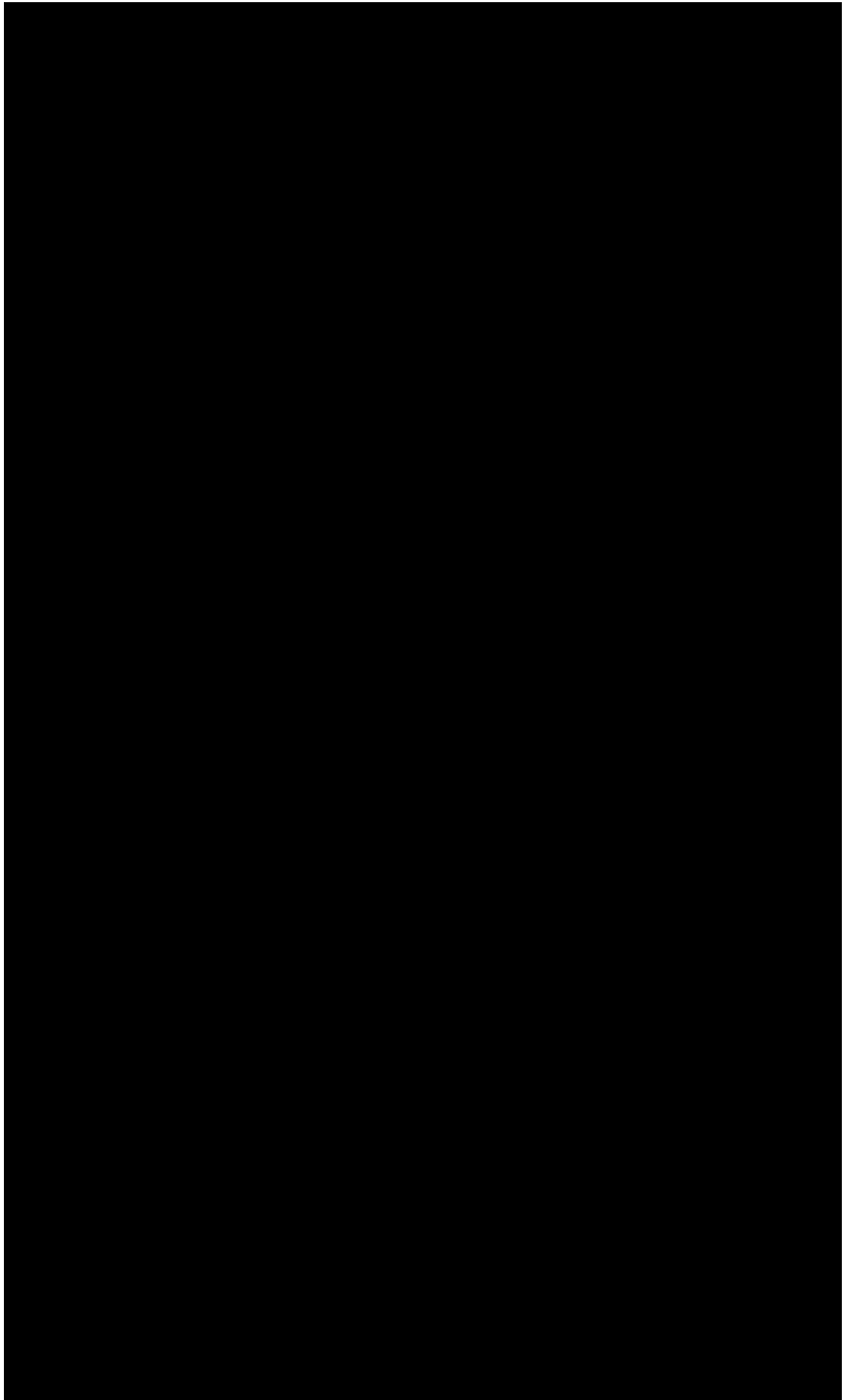
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



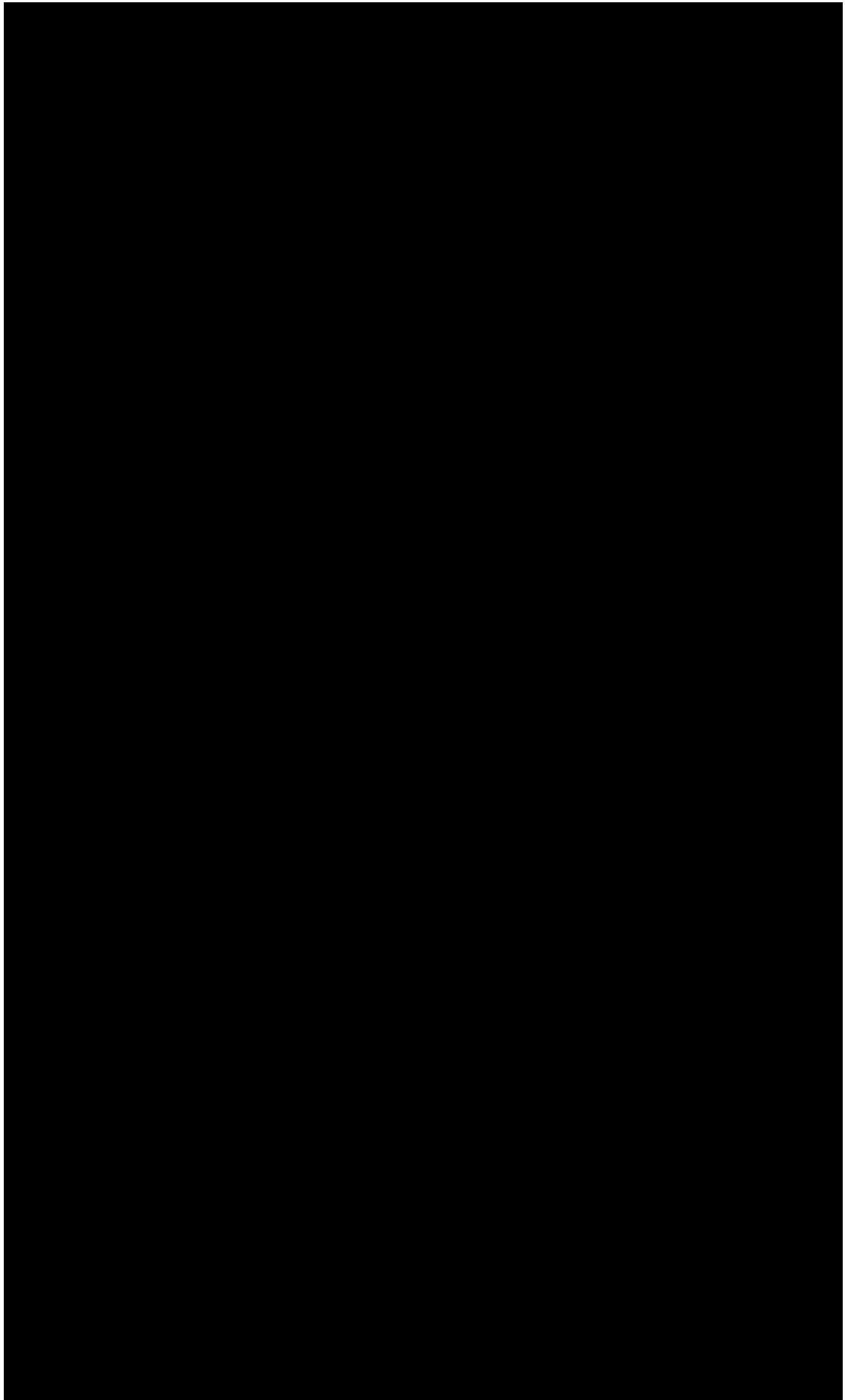
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



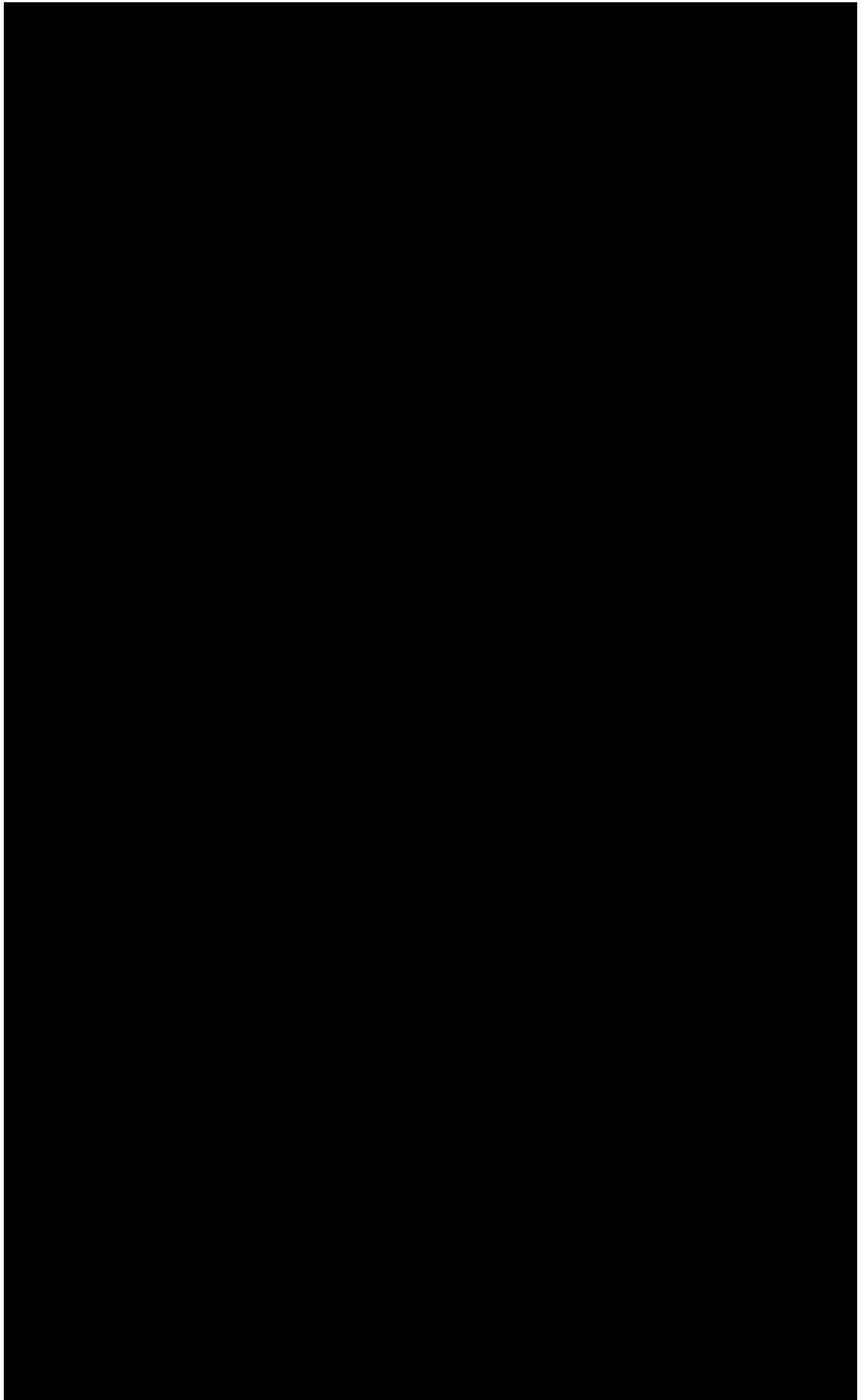
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



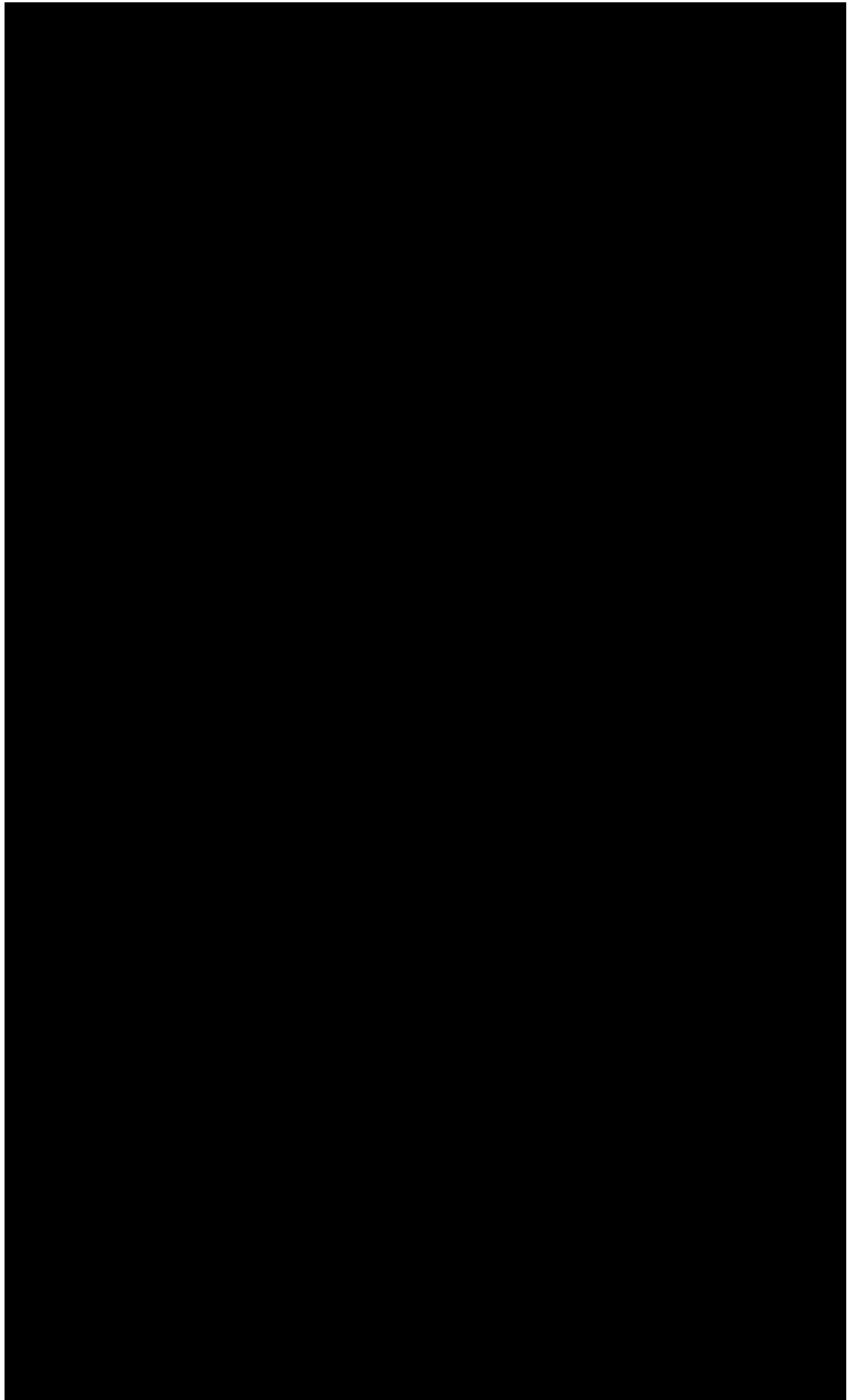
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



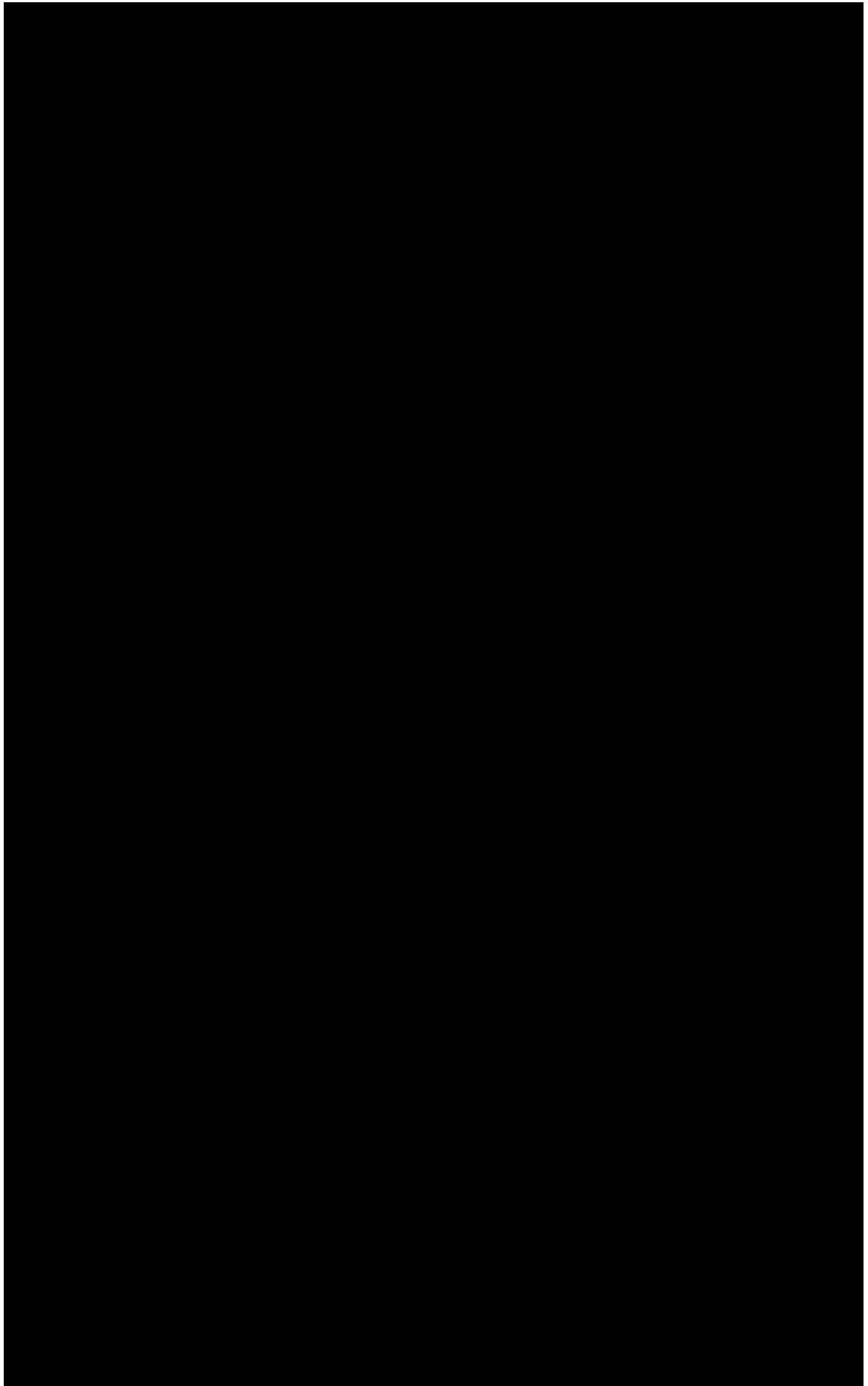
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



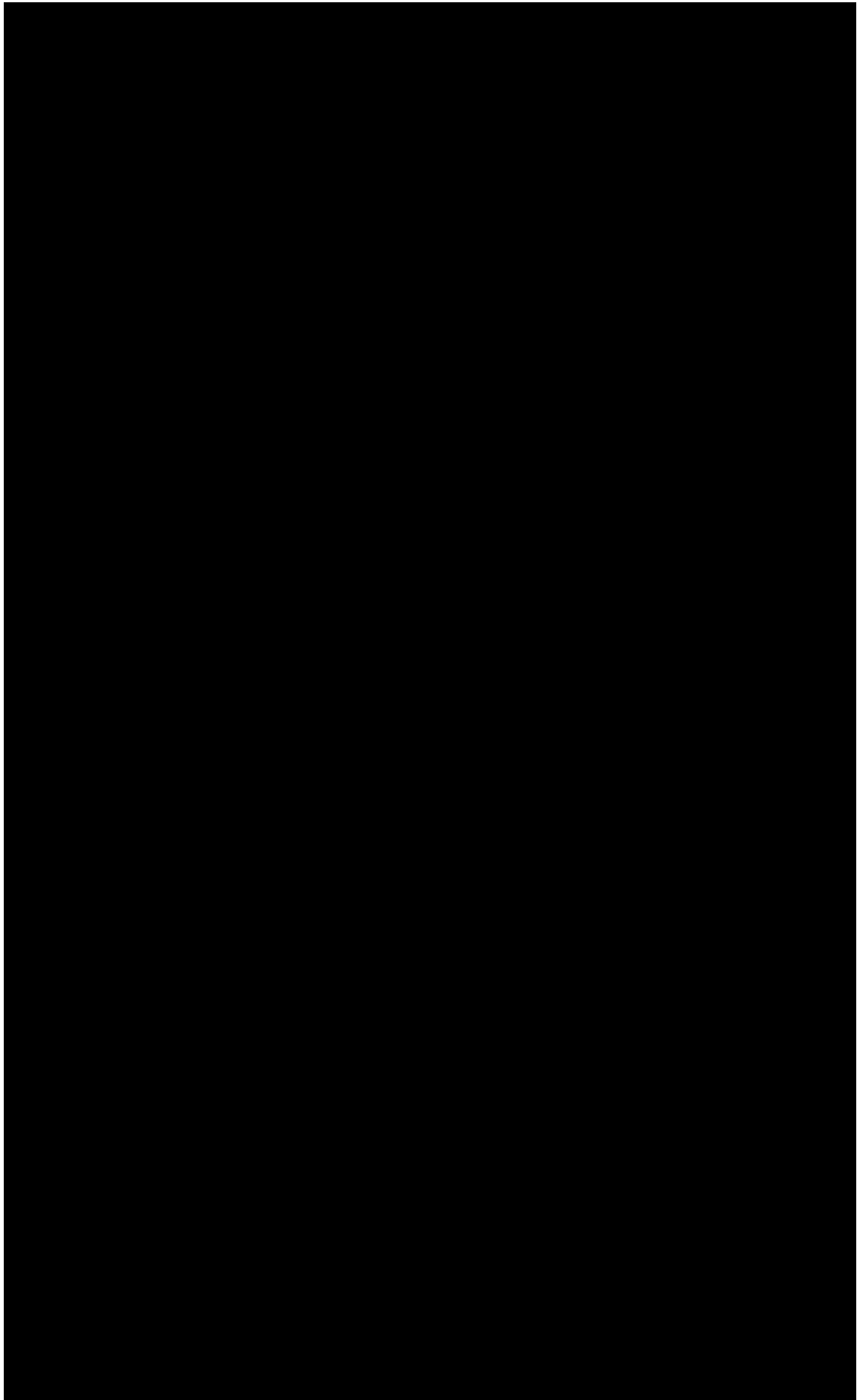
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



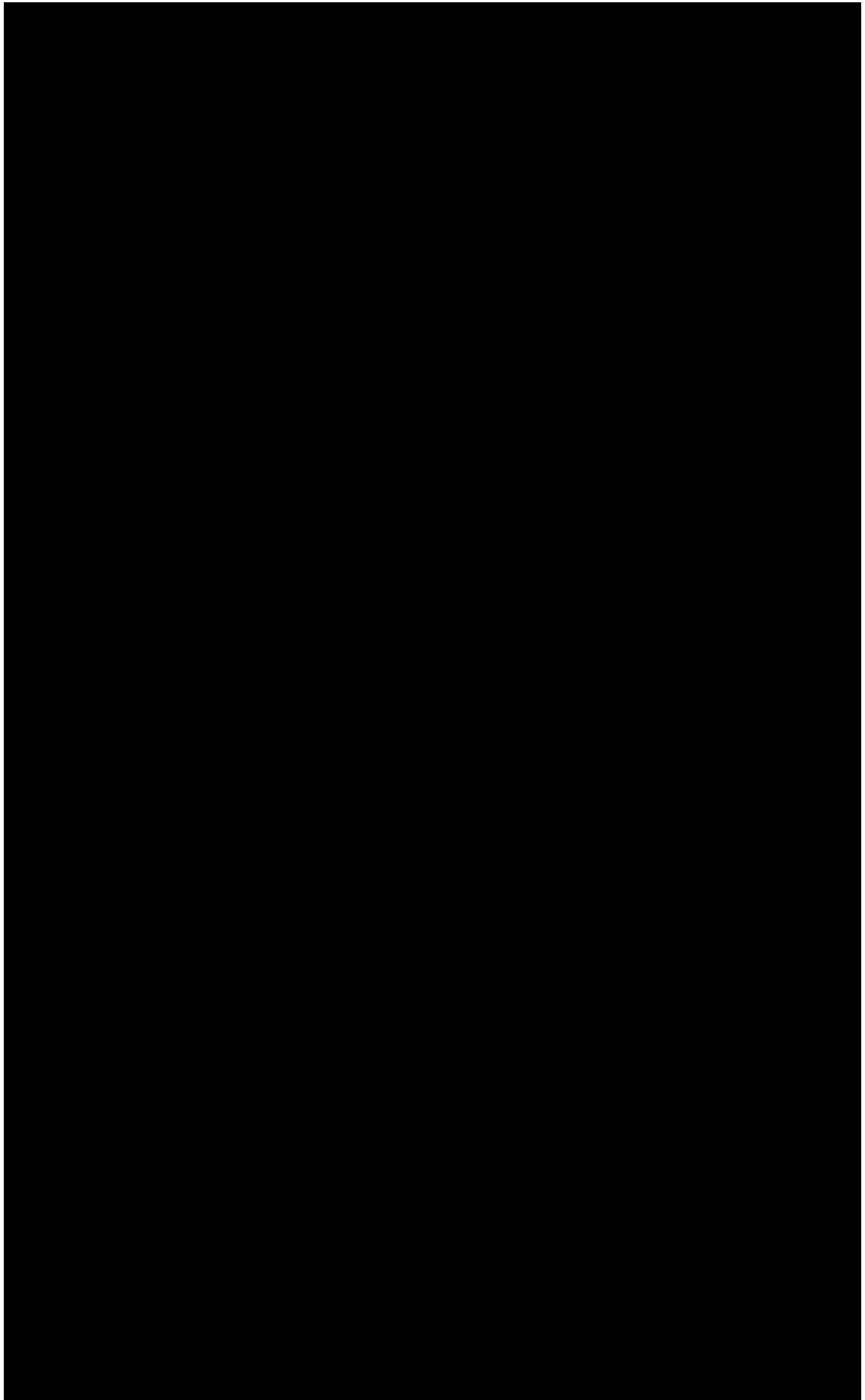
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



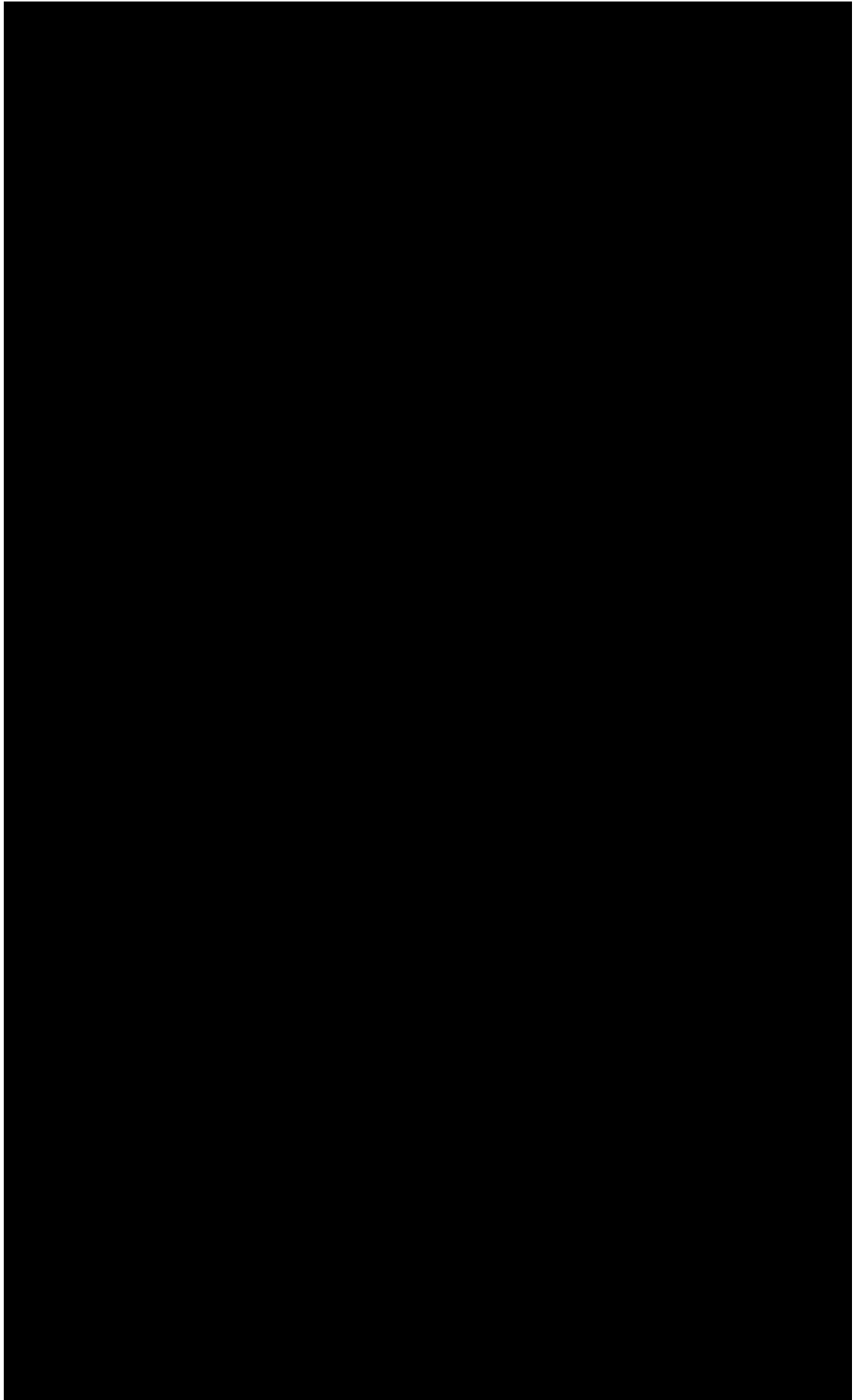
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



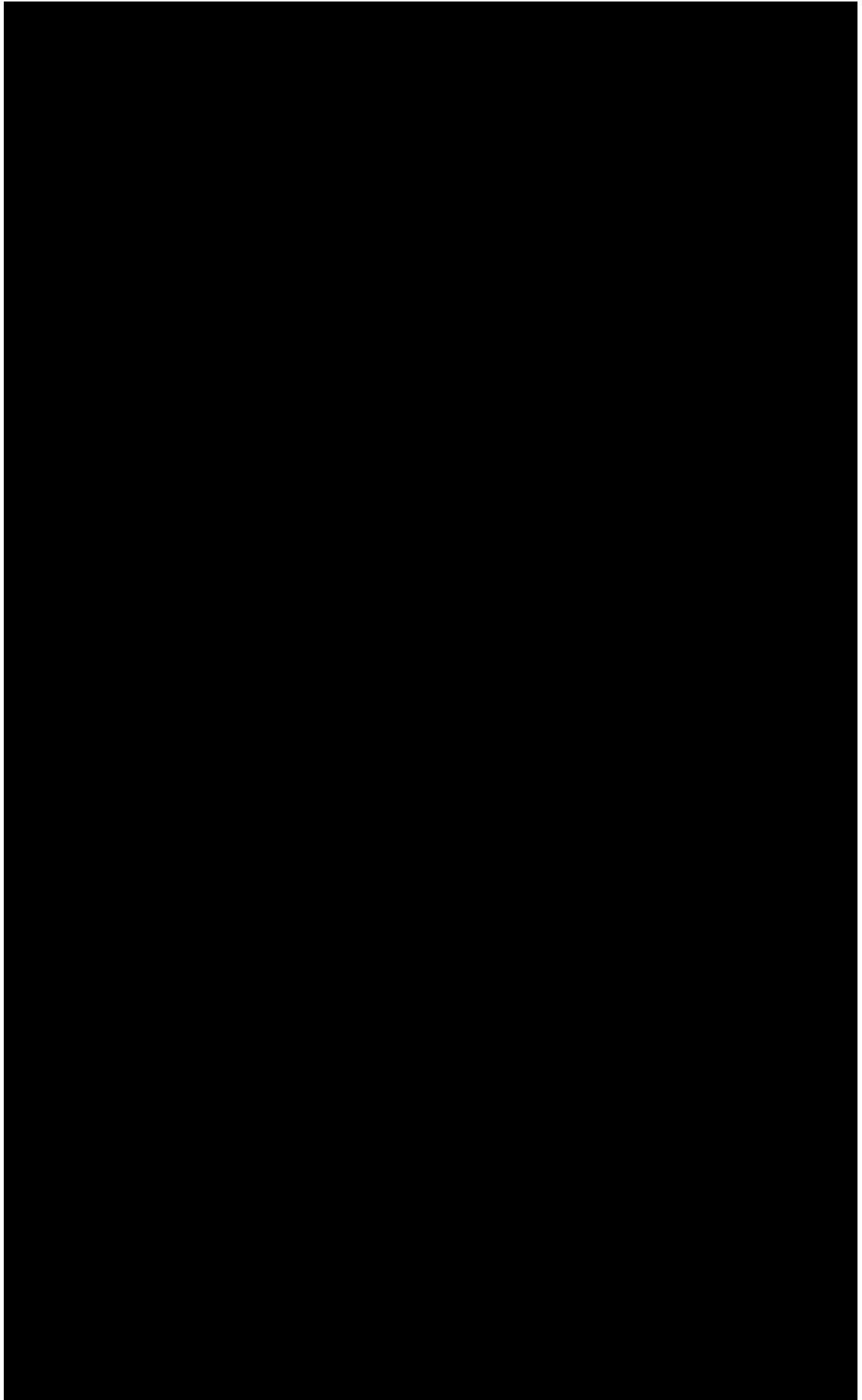
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



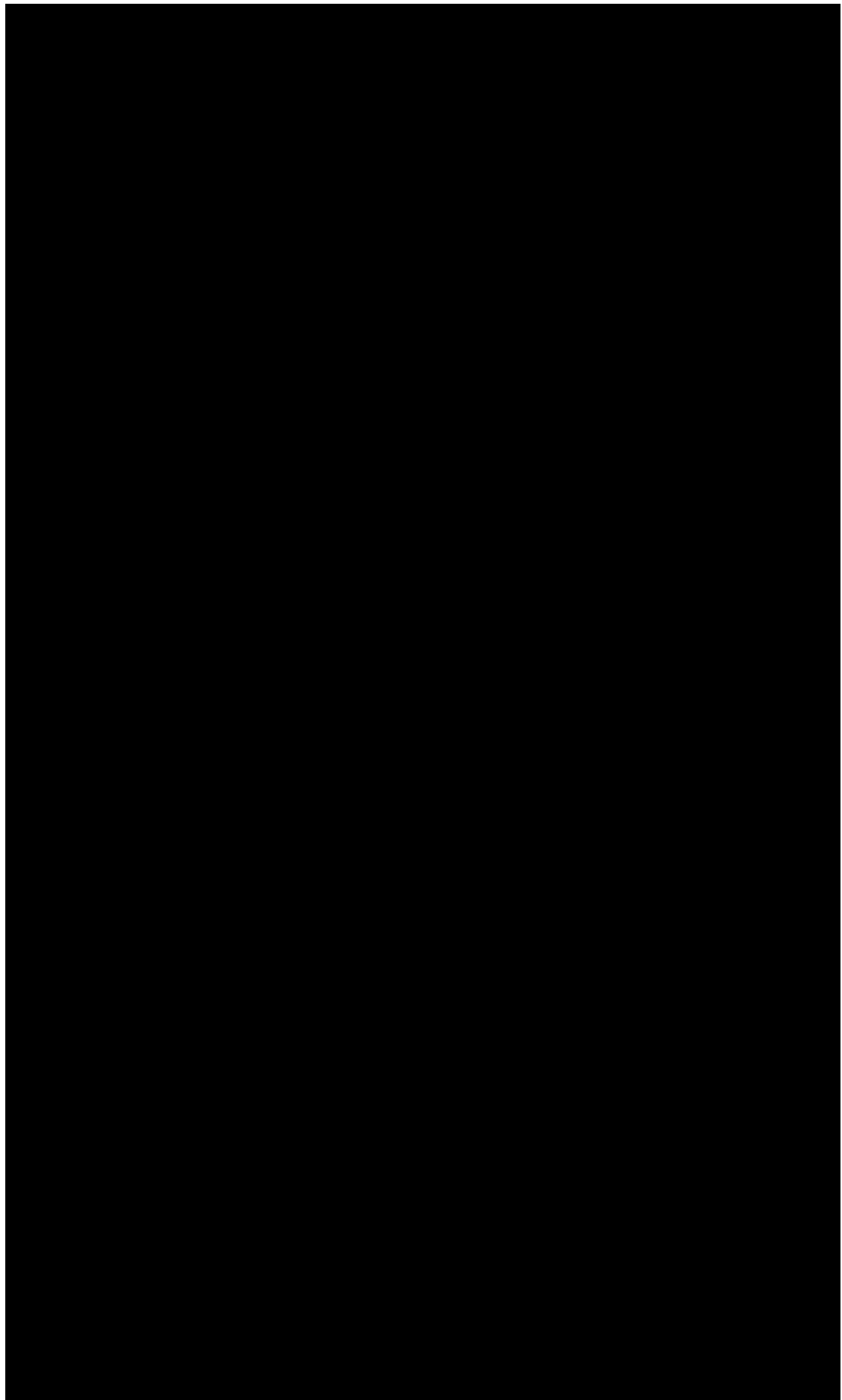
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



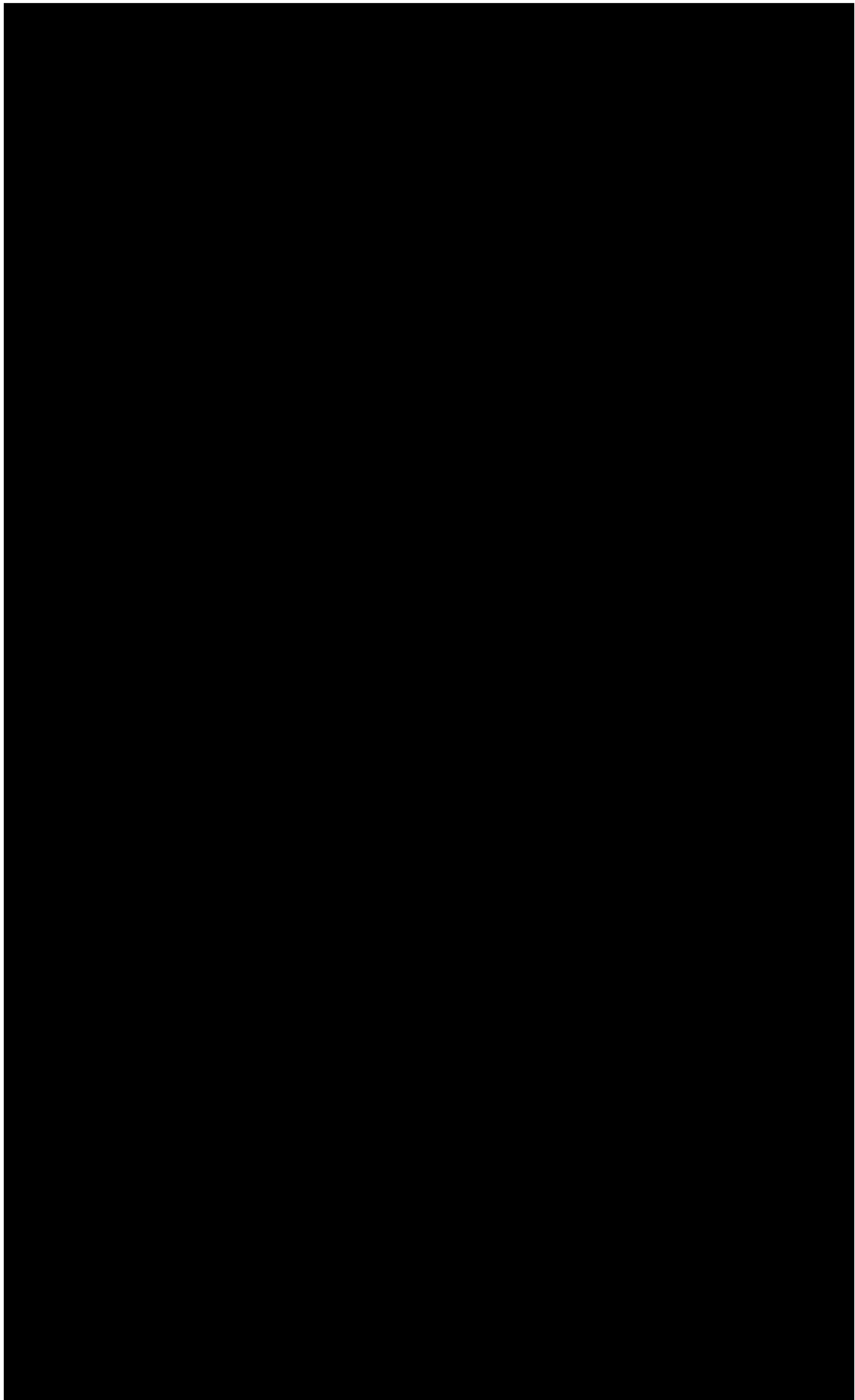
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



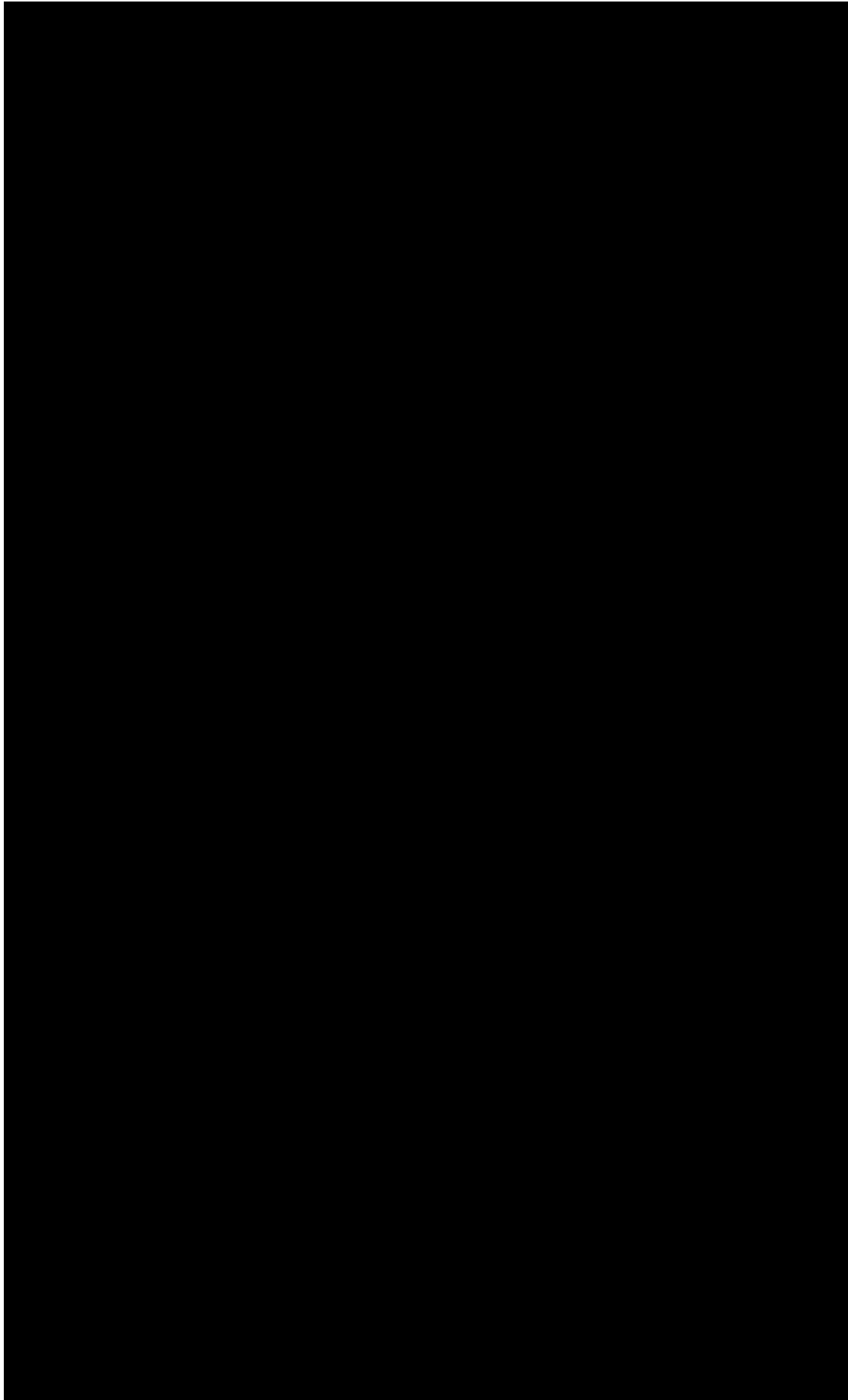
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



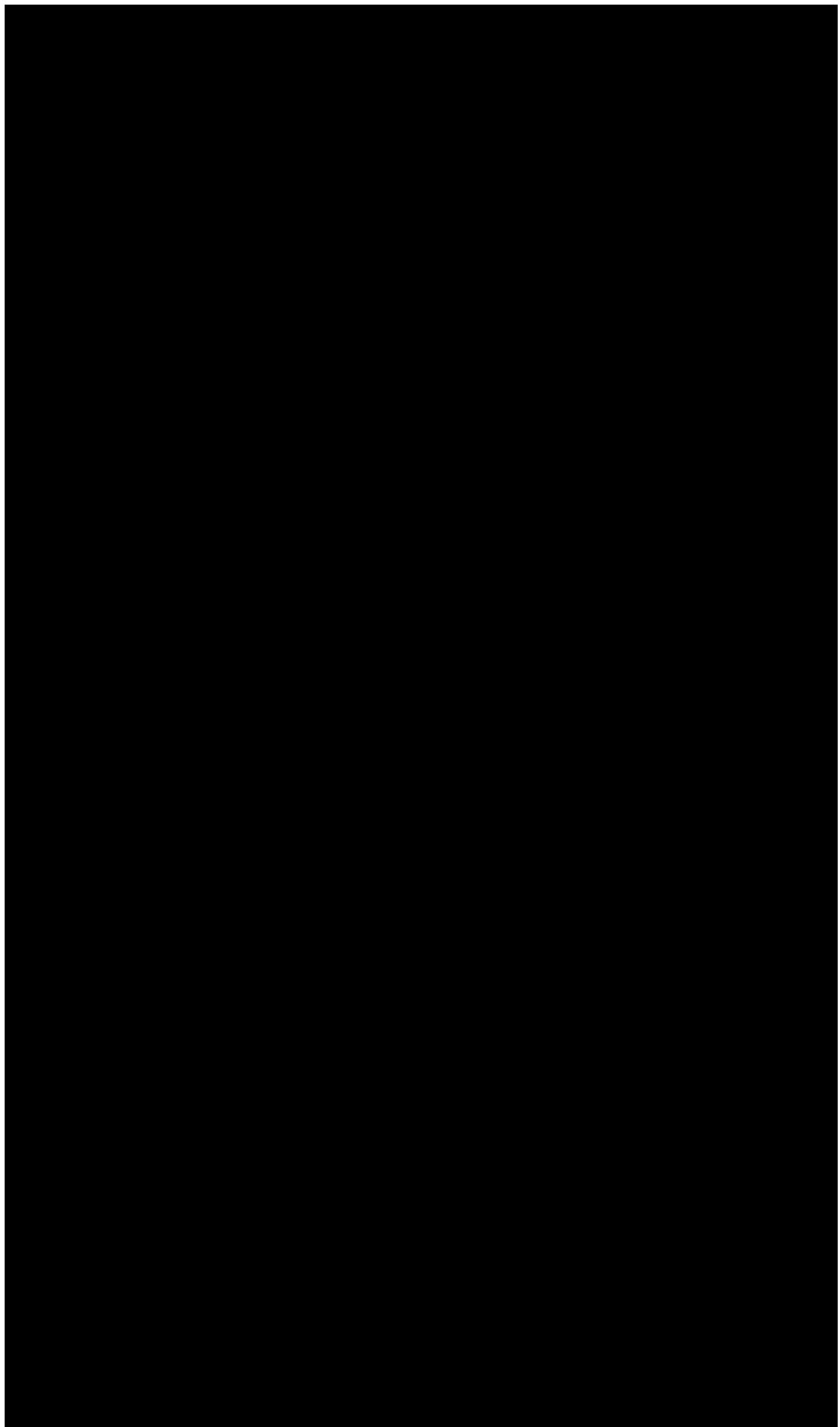
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



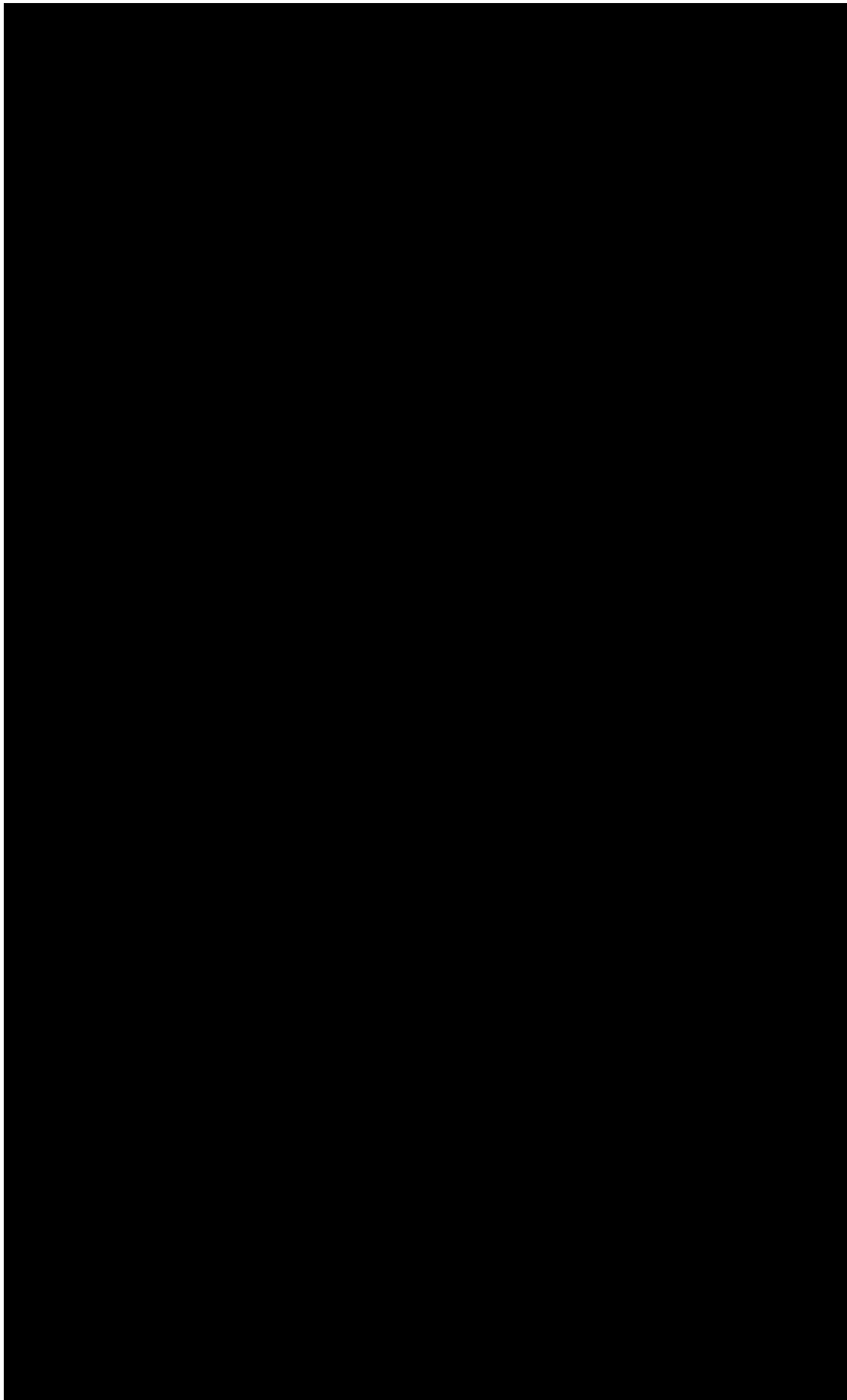
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



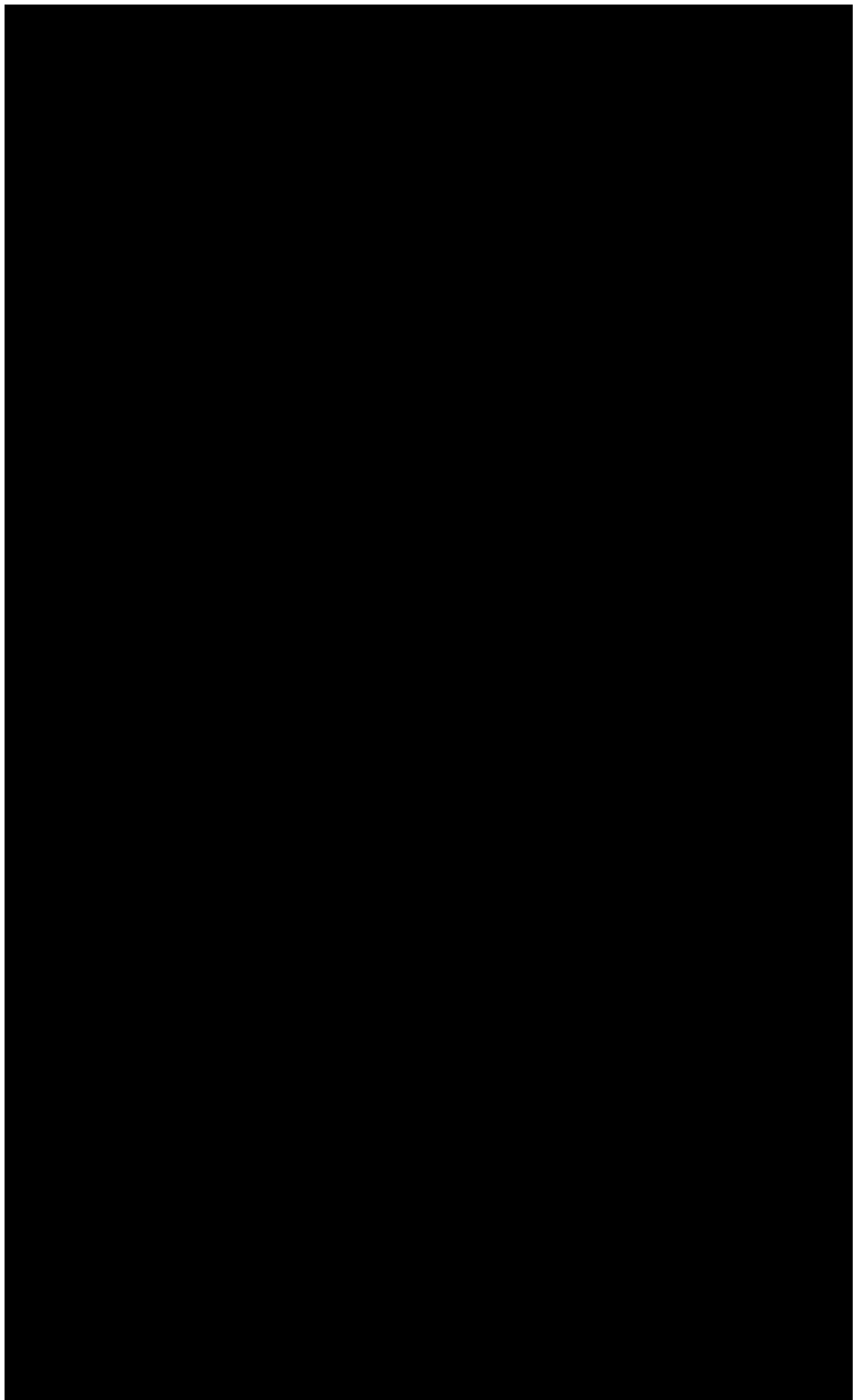
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



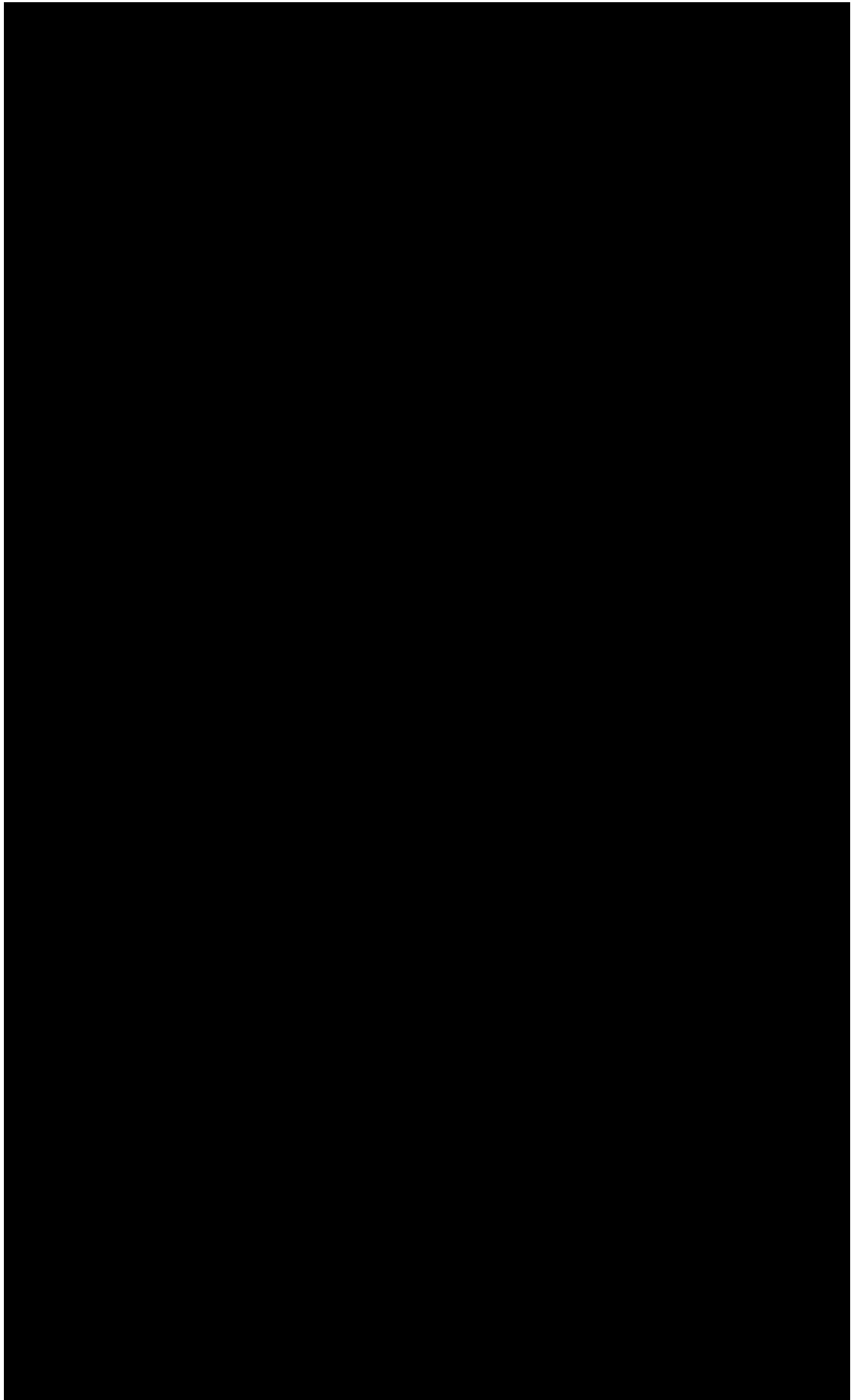
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



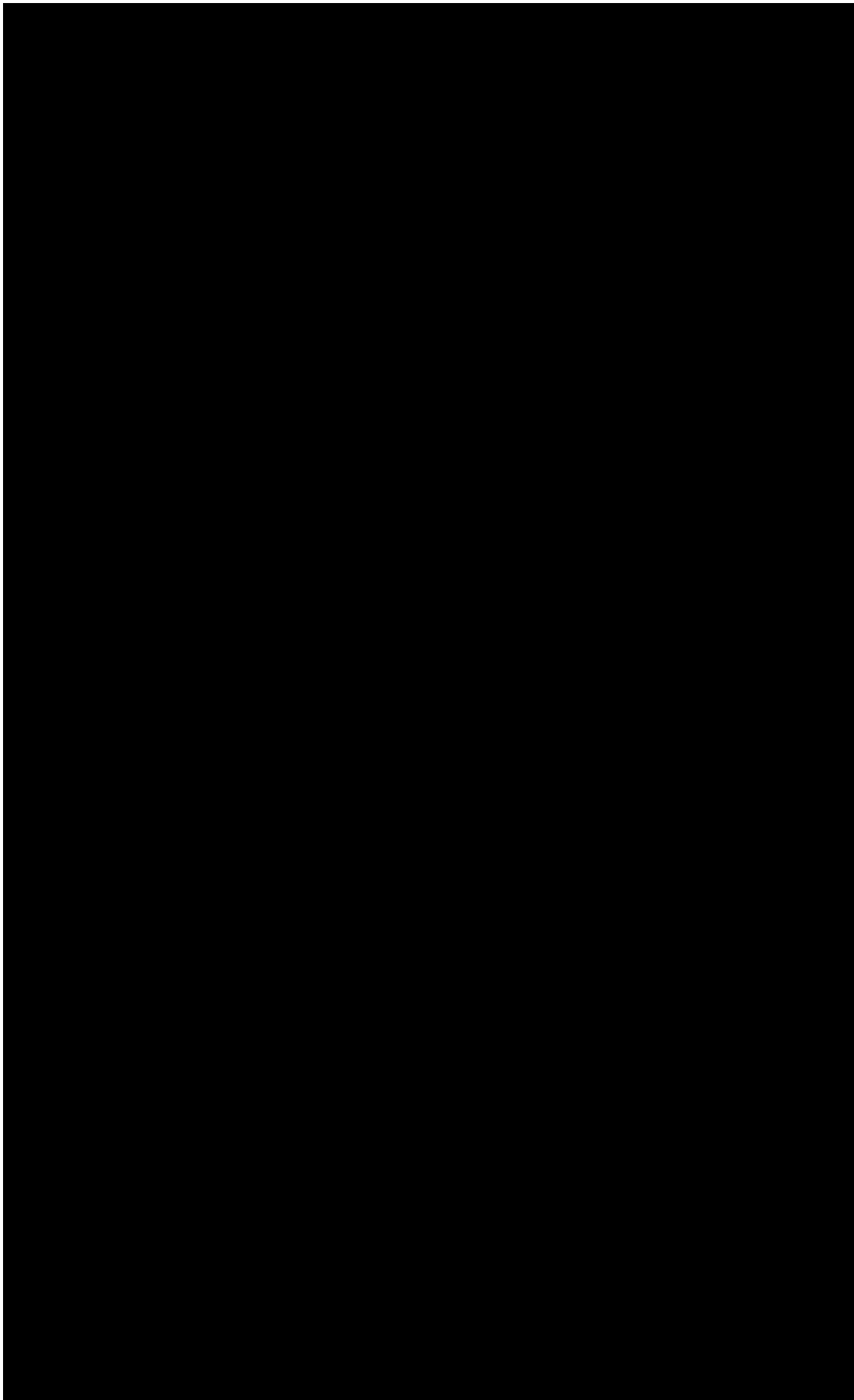
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



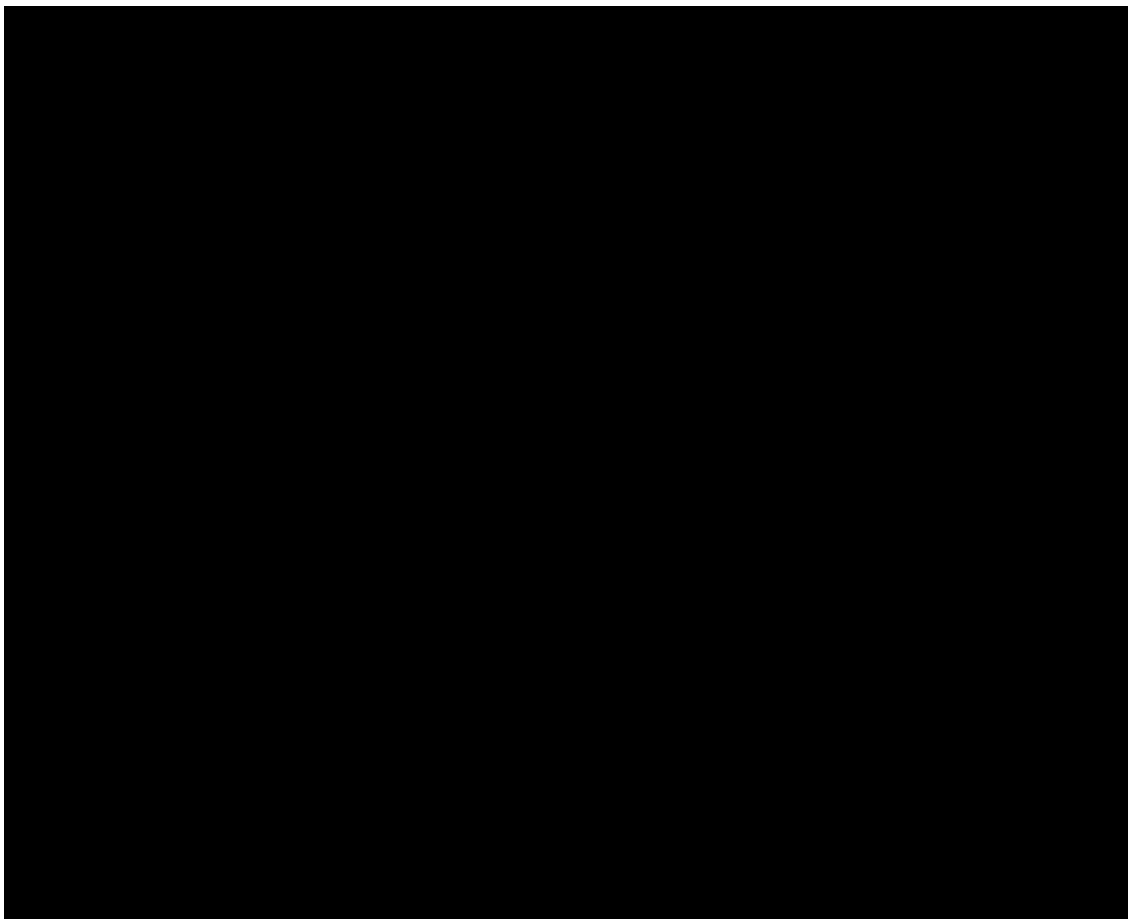
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



MR. BUSH: When we were going through those, I didn't notice, but we went through both -- both those dates?

MR. BAKER: We did go through both those dates.

MR. BUSH: Okay.

MR. BAKER: Okay?

MR. BUSH: Yeah.

BY MR. BAKER:

Q All right. So is it true that before CCS, which is C-E-G-E-D-I-M -- do you say Cegedim? Is that --

1 A Yeah.

2 Q Okay. I'm going to call them CCS.

3 A That's fine.

4 Q The Buzzeo company, you know them,
5 right?

6 A Yes.

7 Q Okay. So before the Cegedim Buzzeo
8 company was hired to write the SOM software, there
9 was no software program that was based upon an
10 algorithm to flag orders to appear on an IRR at
11 CVS in the SOM department, correct?

12 A I -- I don't know either way. I was
13 just given a job to do. When that came up, the
14 process was there.

15 Q Okay. In any event, you're unaware of
16 any that preceded that particular program,
17 correct?

18 A Yeah, I don't know.

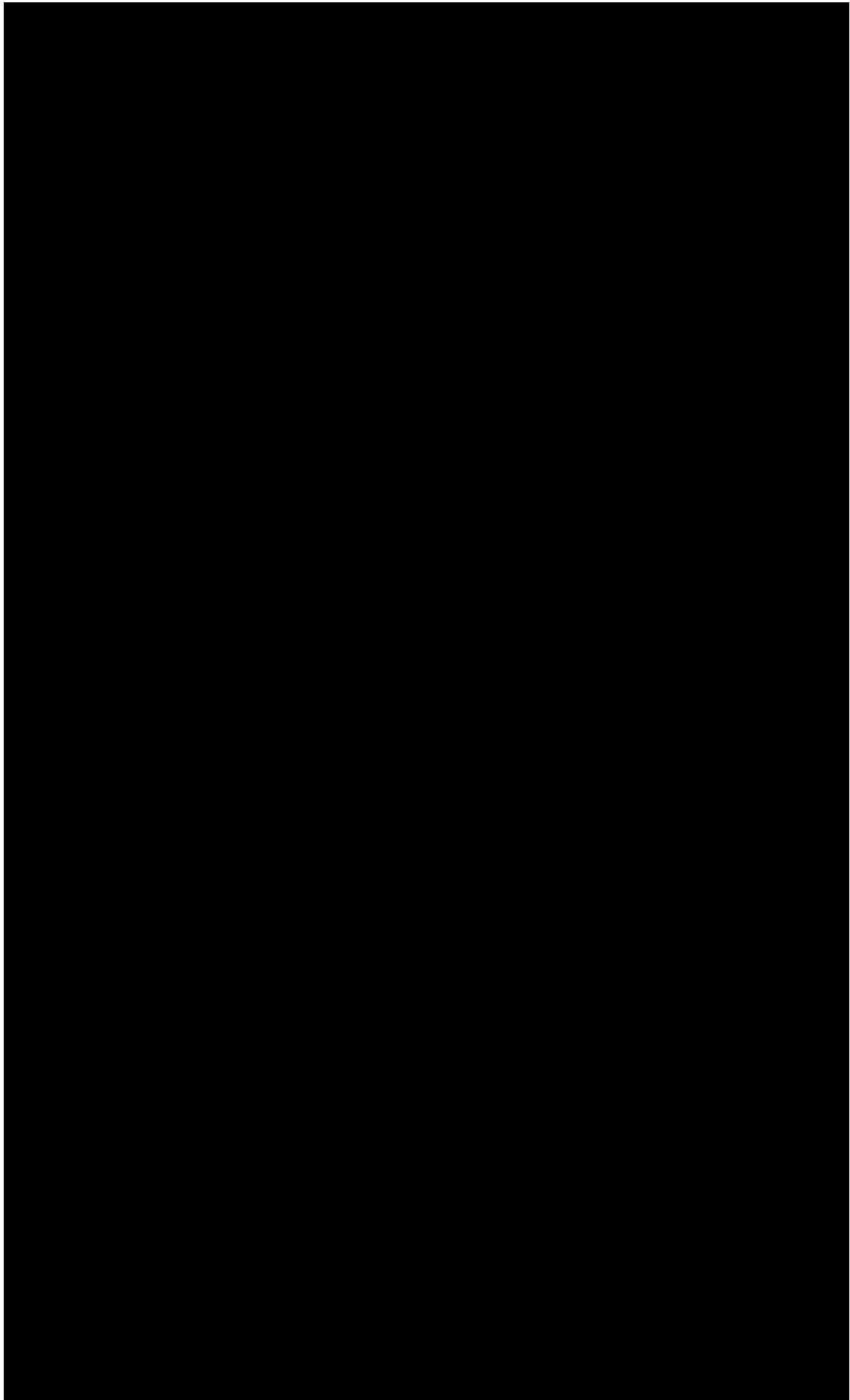
19 Q Okay. Let me show you Exhibit 10 --
20 610.

21 (Exhibit No. 610 was premarked for
22 identification.)

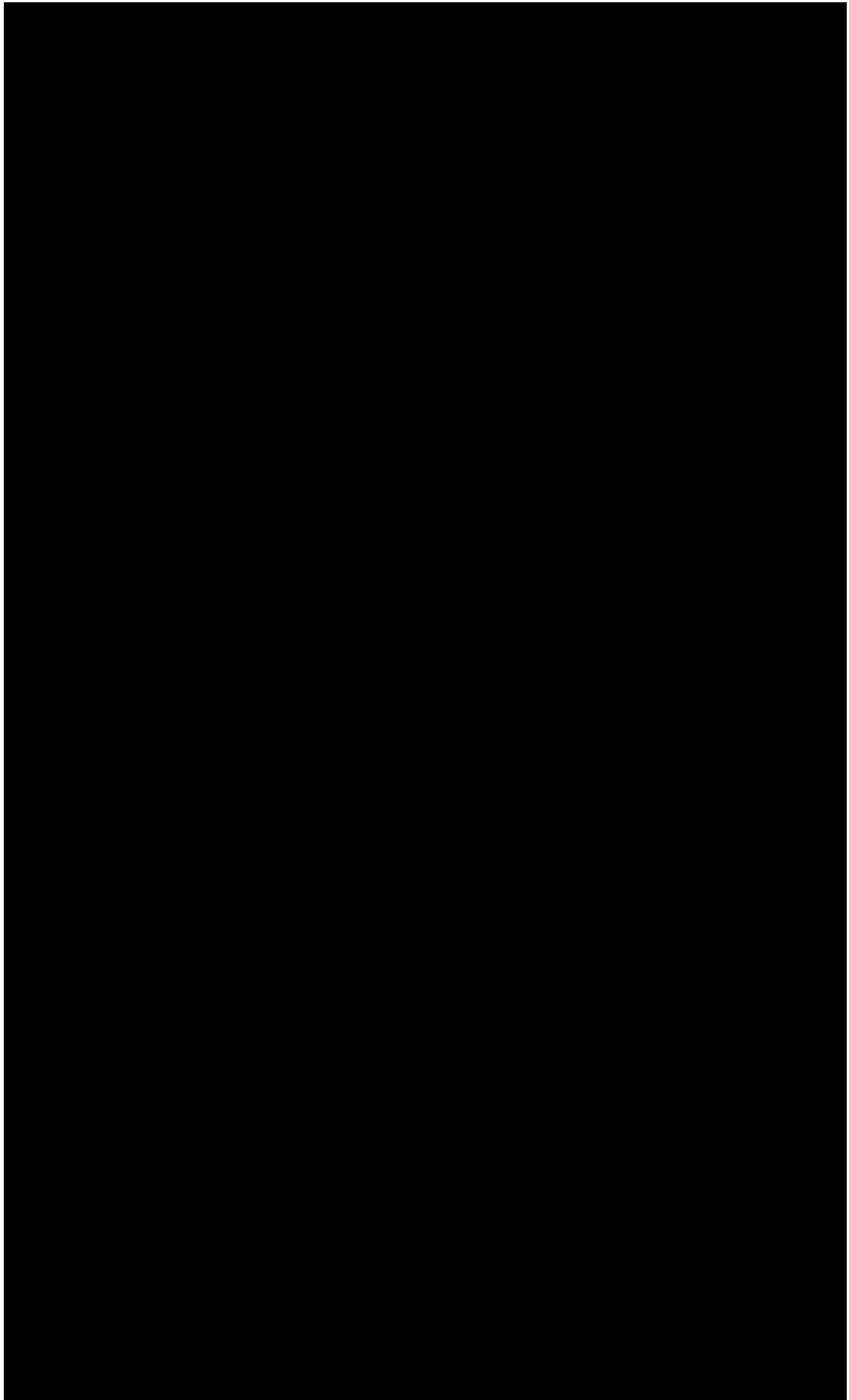
23 BY MR. BAKER:

24 

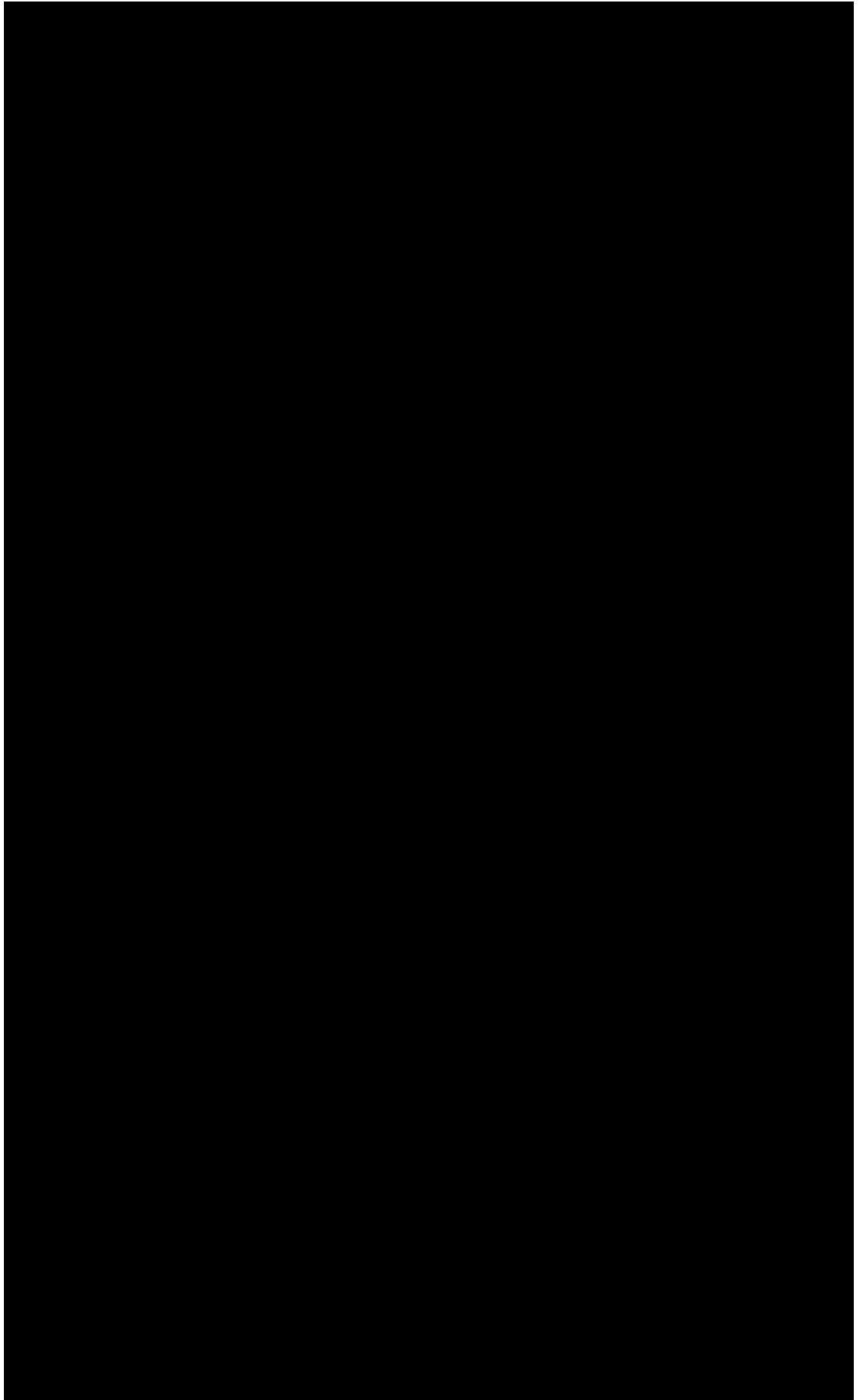
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



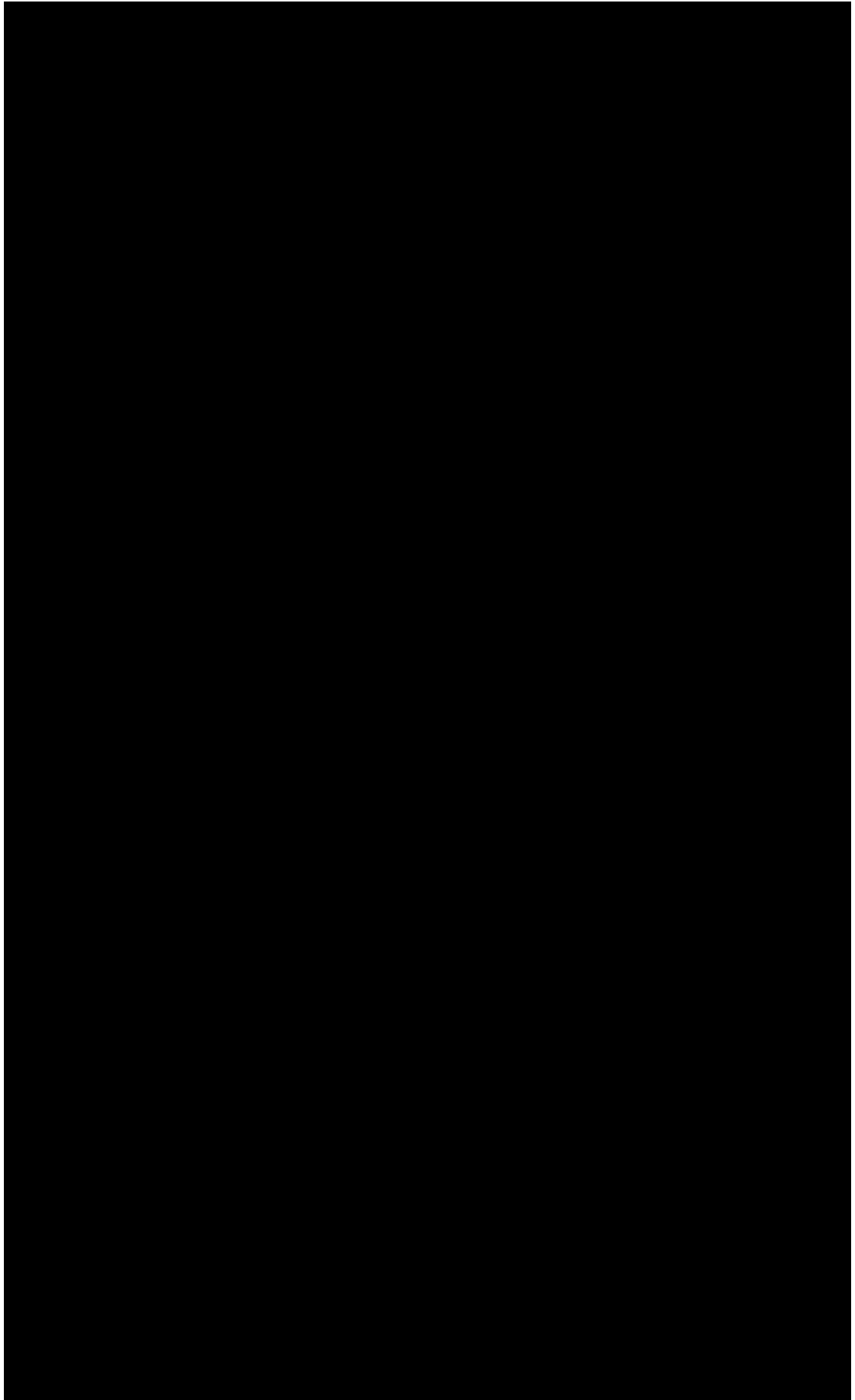
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



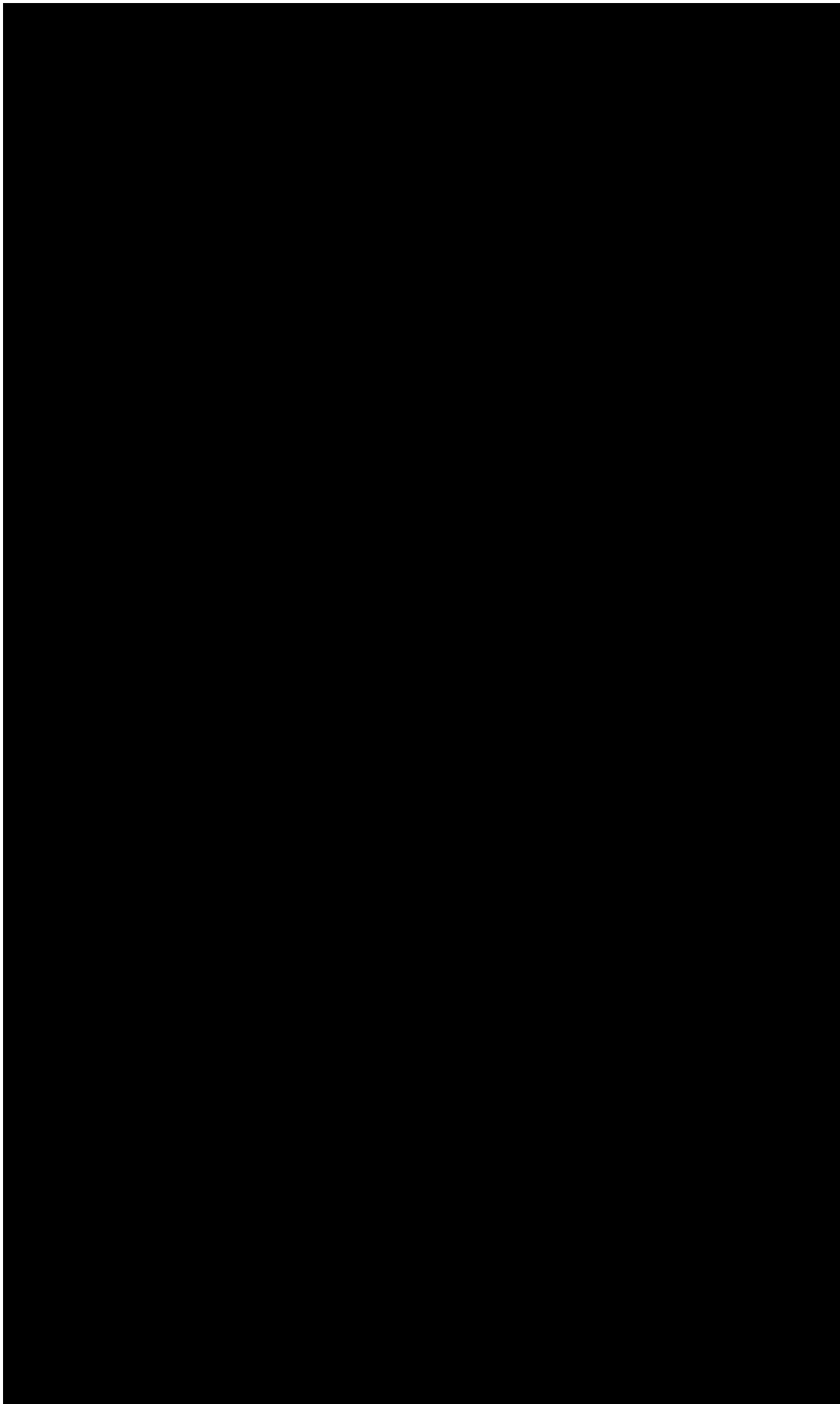
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



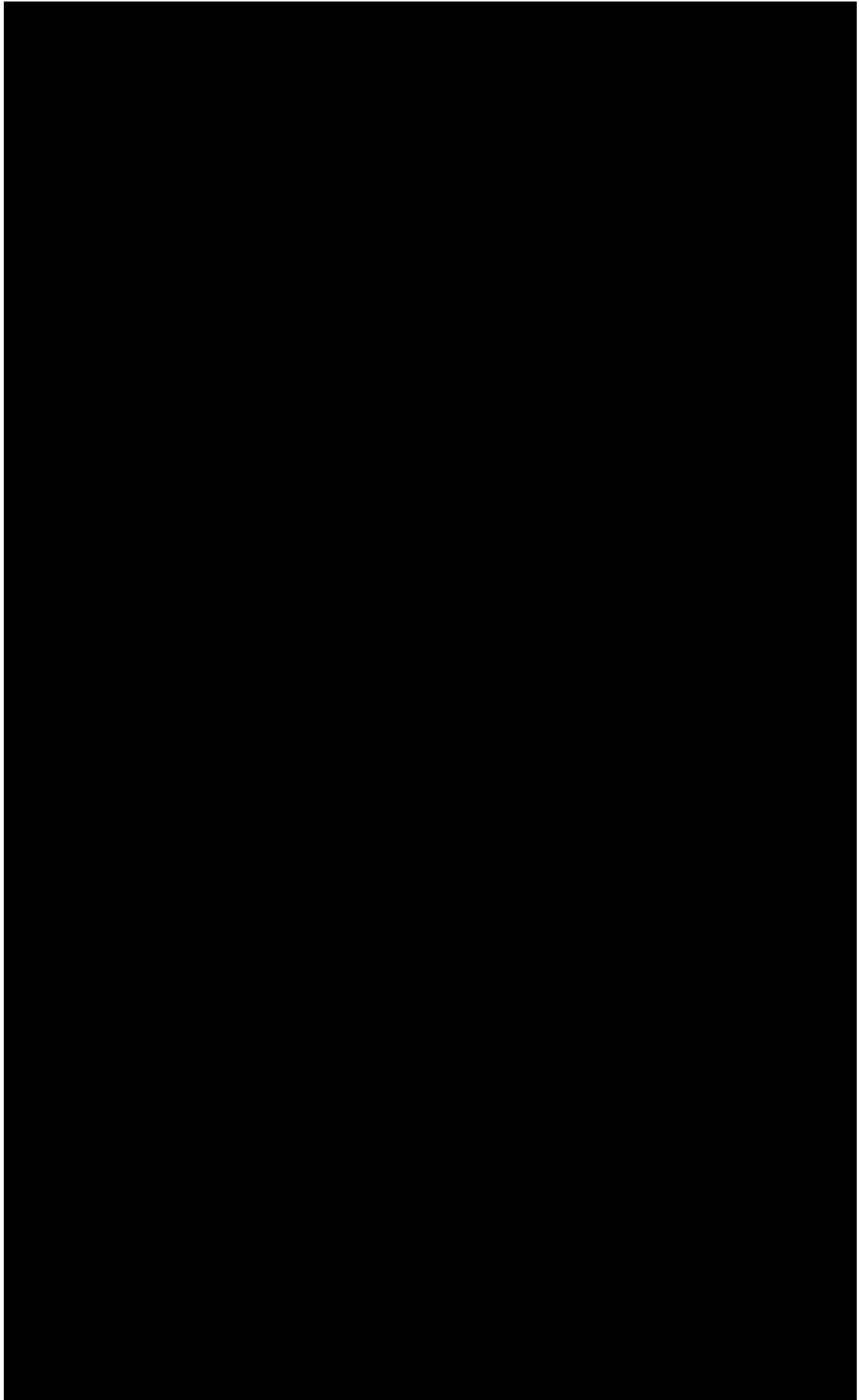
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



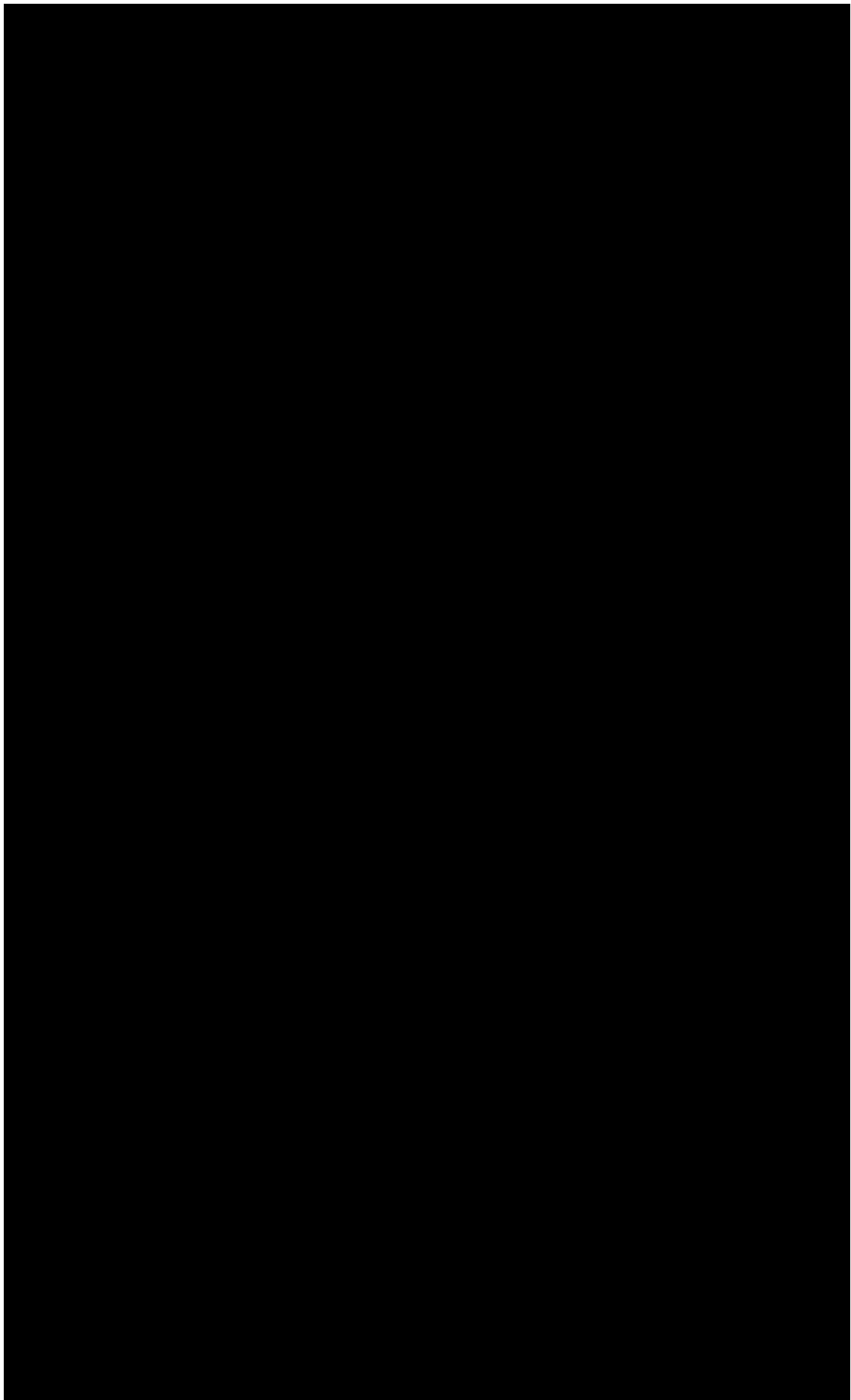
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



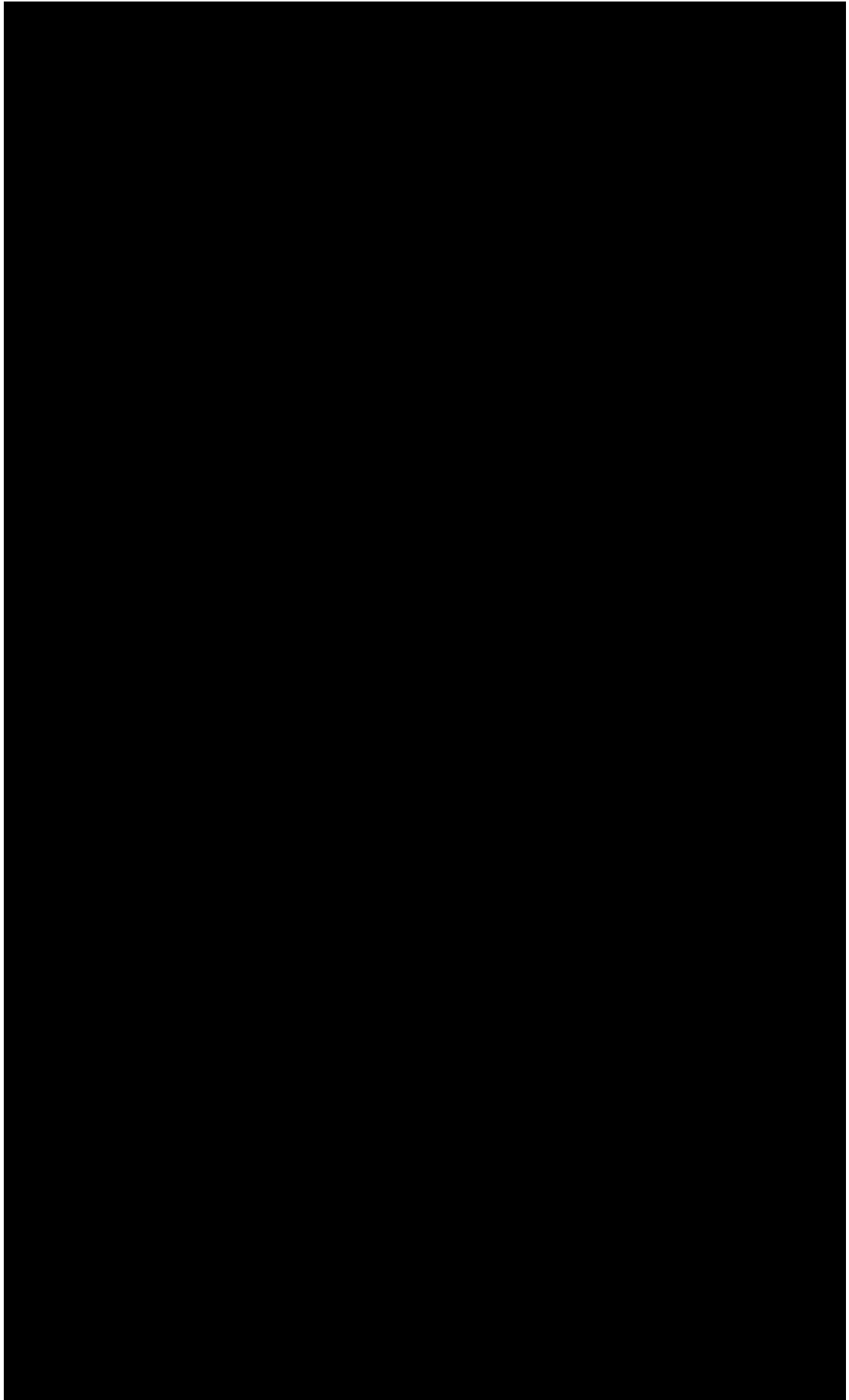
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



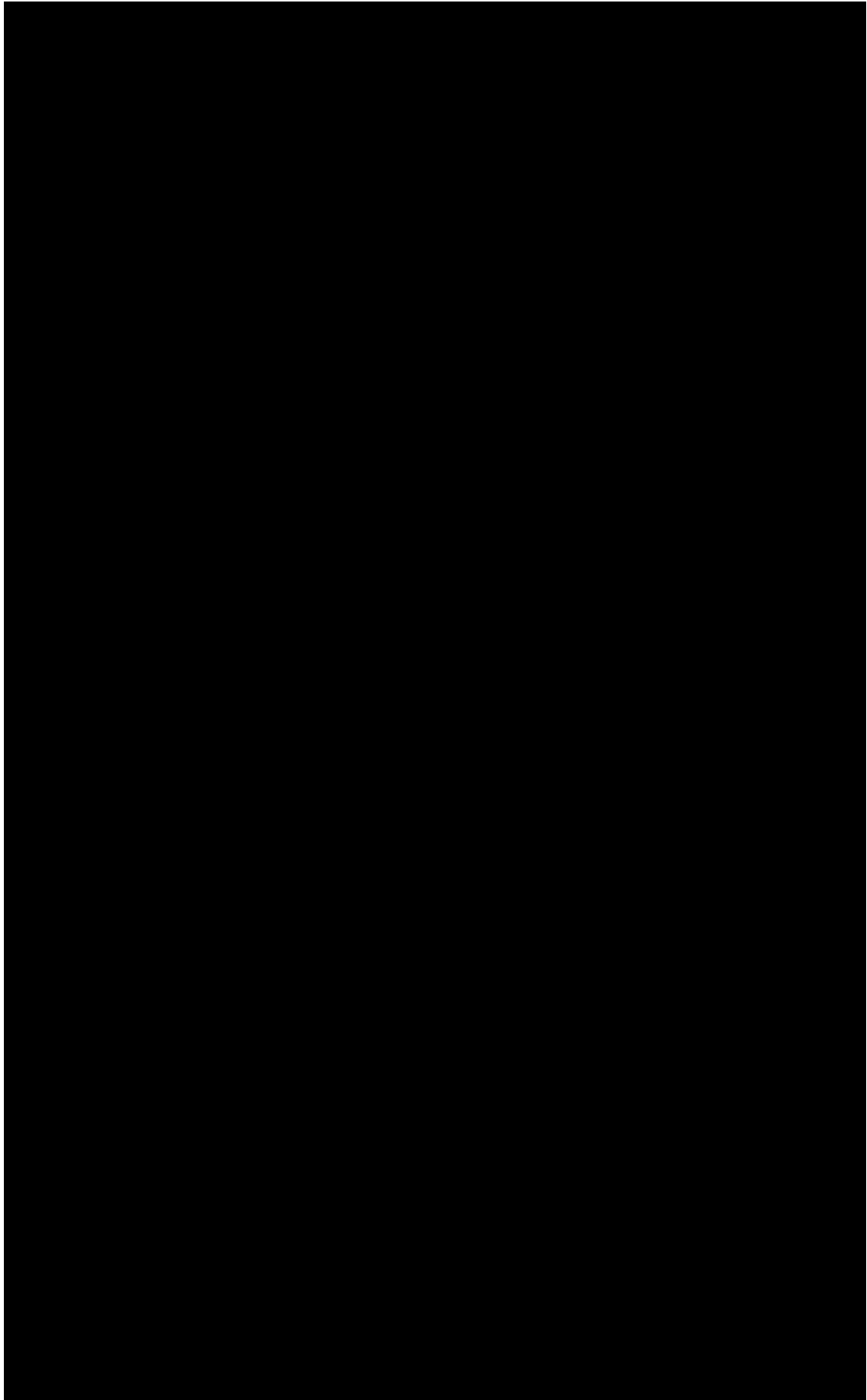
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



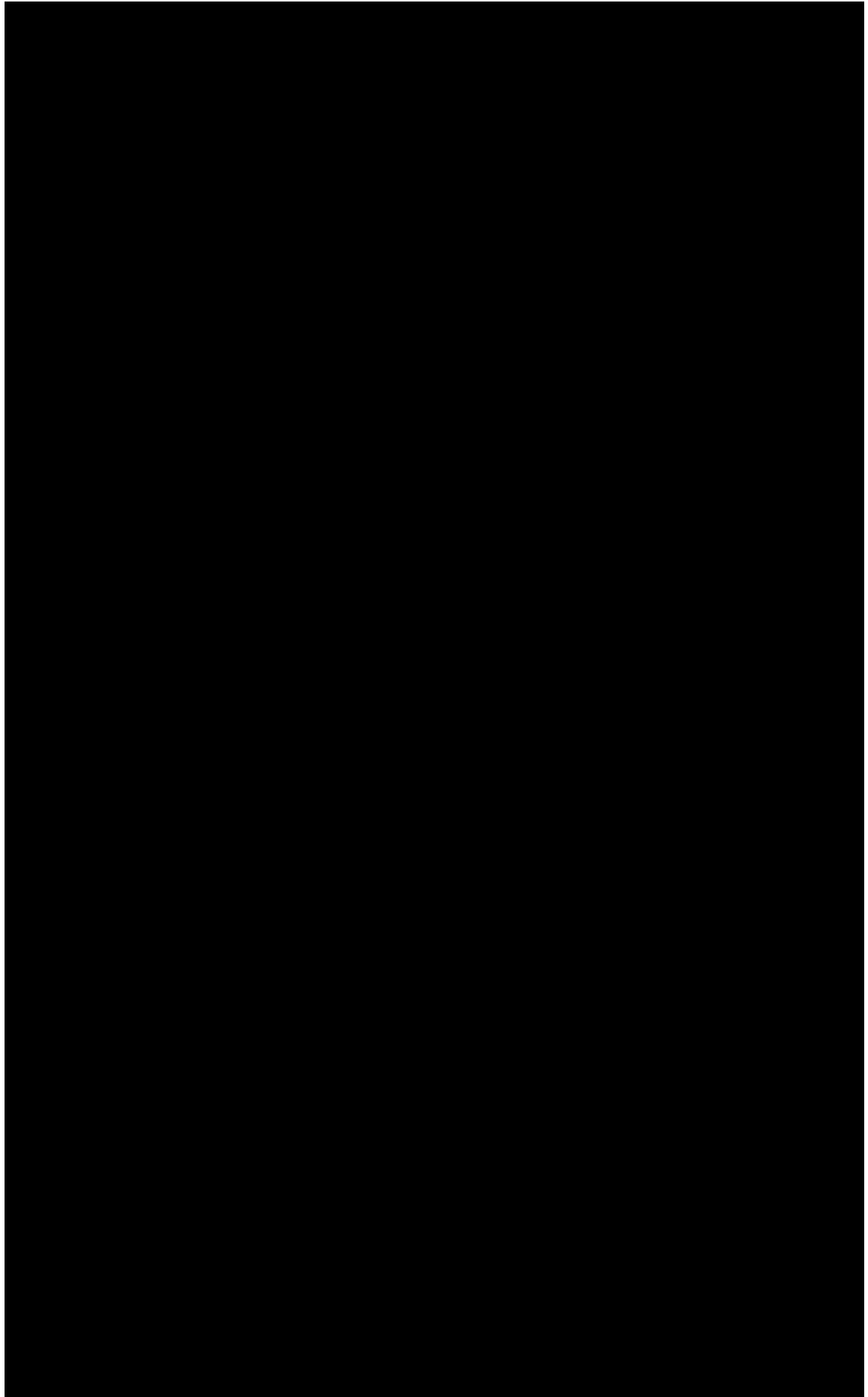
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



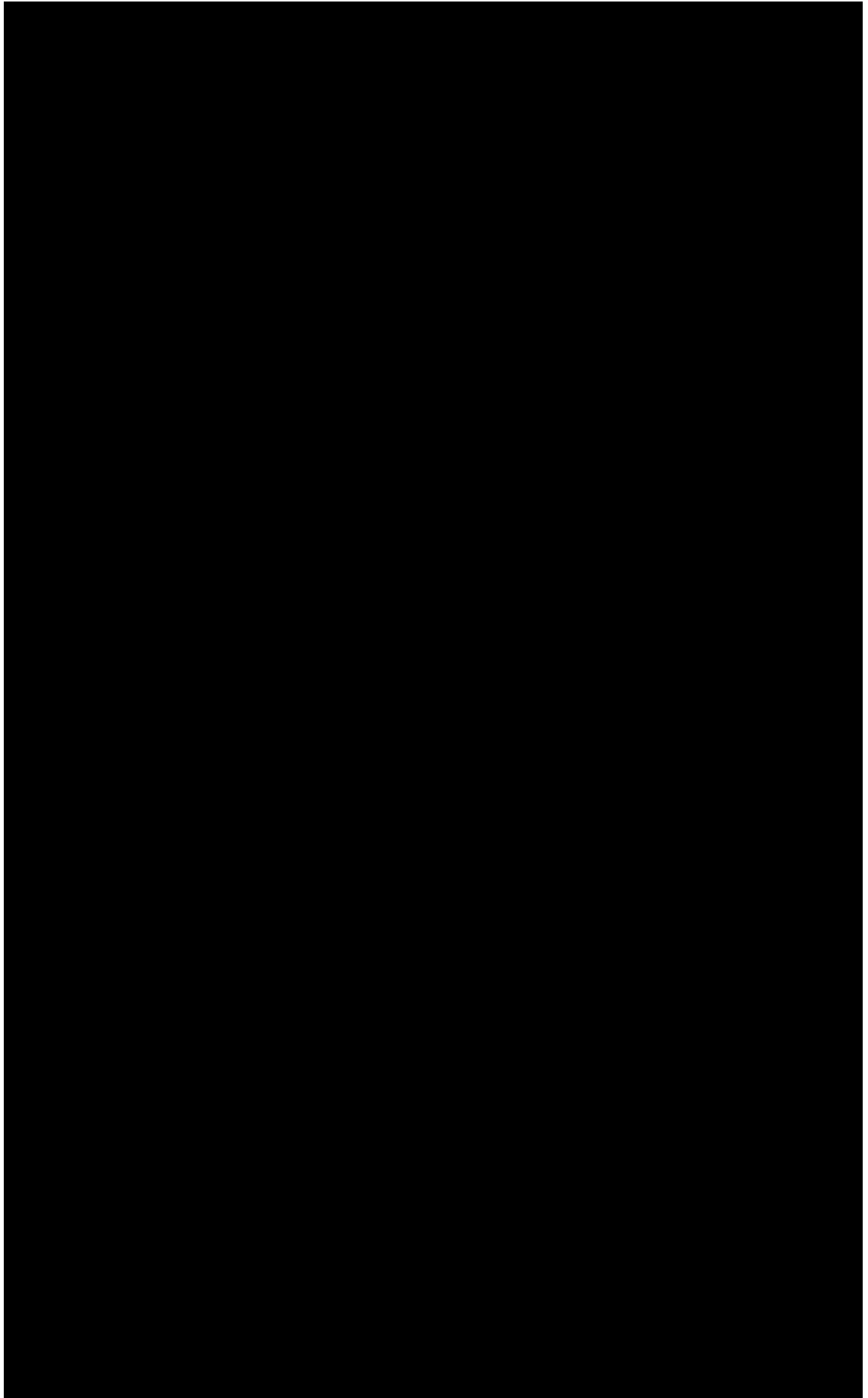
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



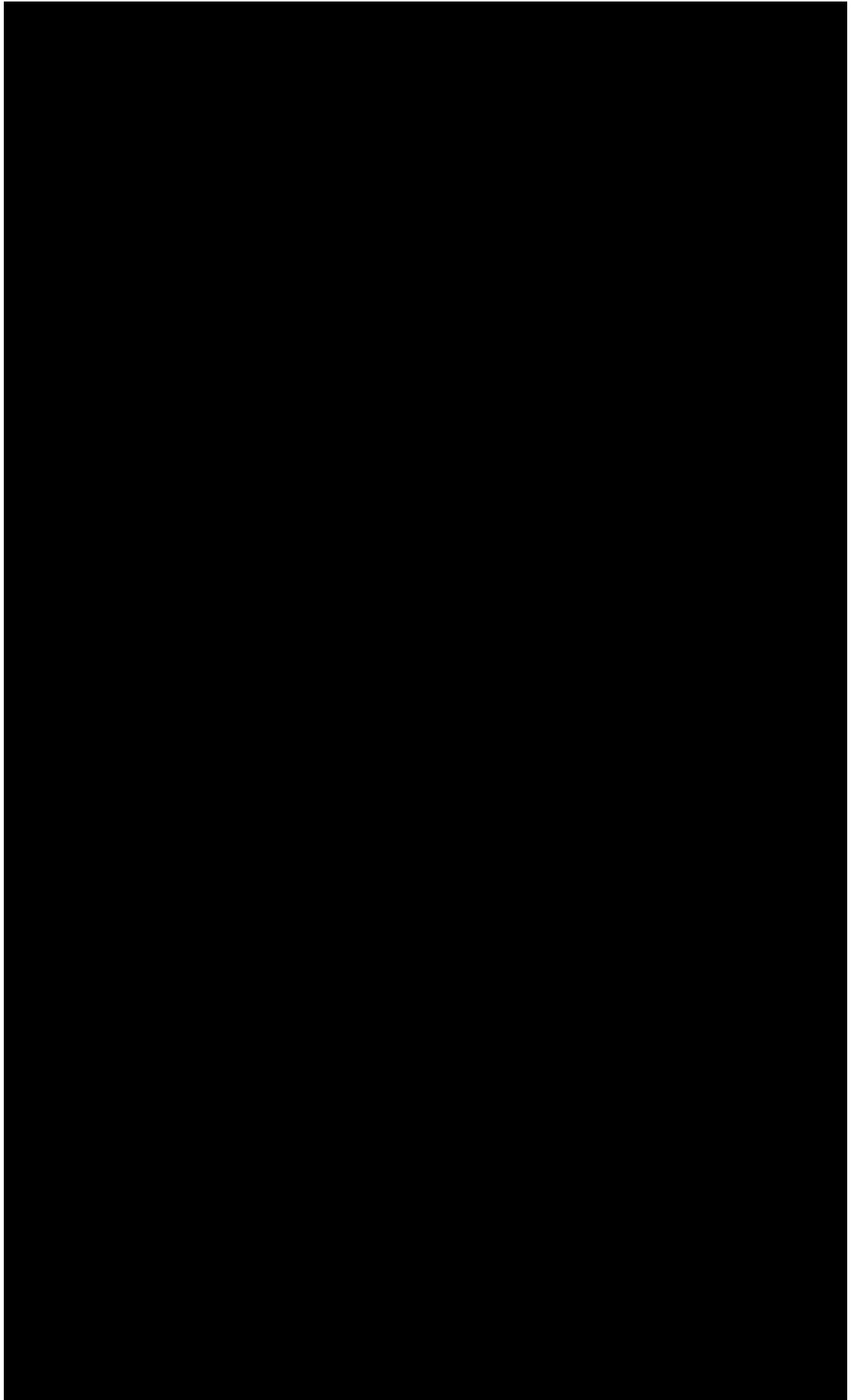
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



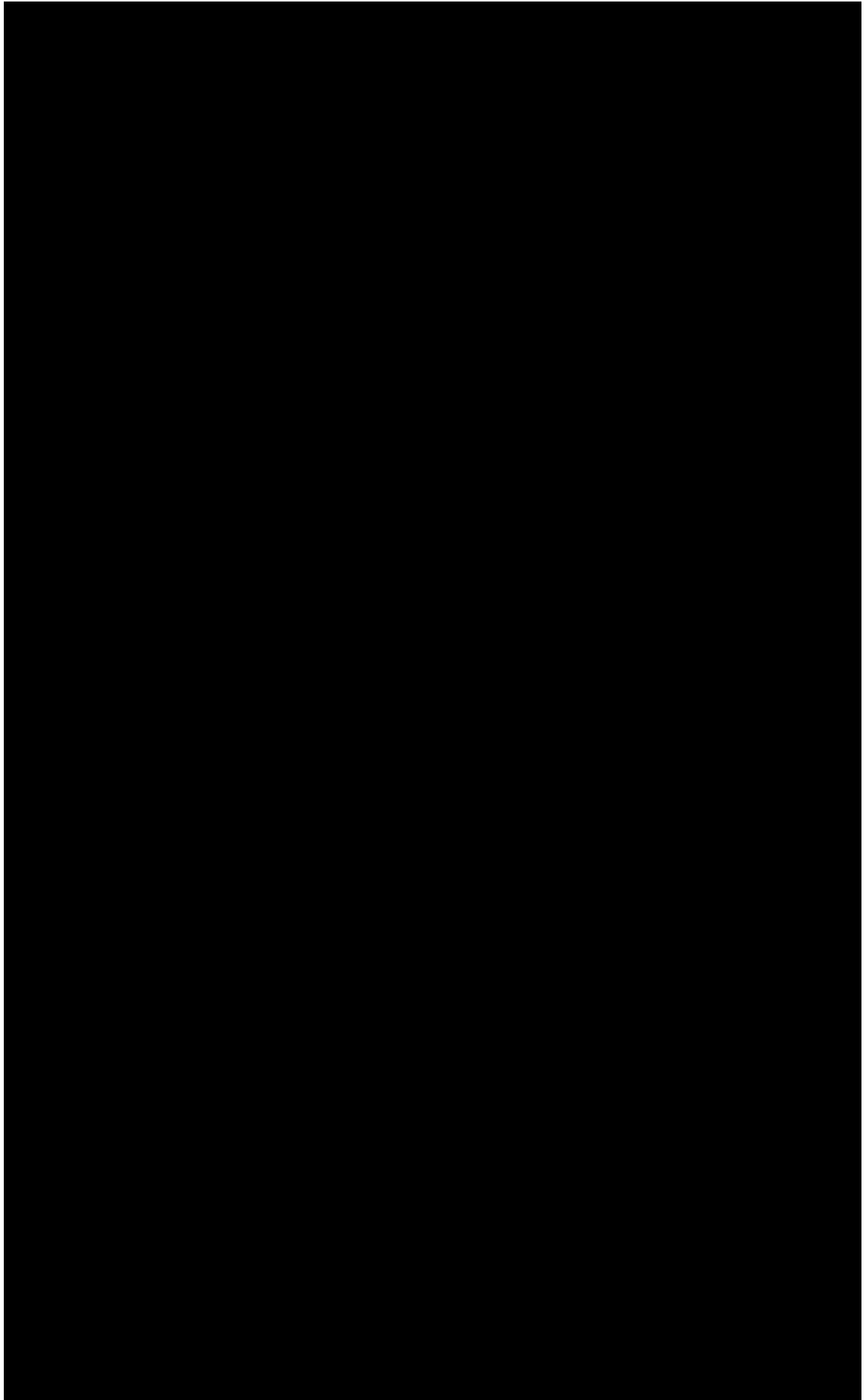
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



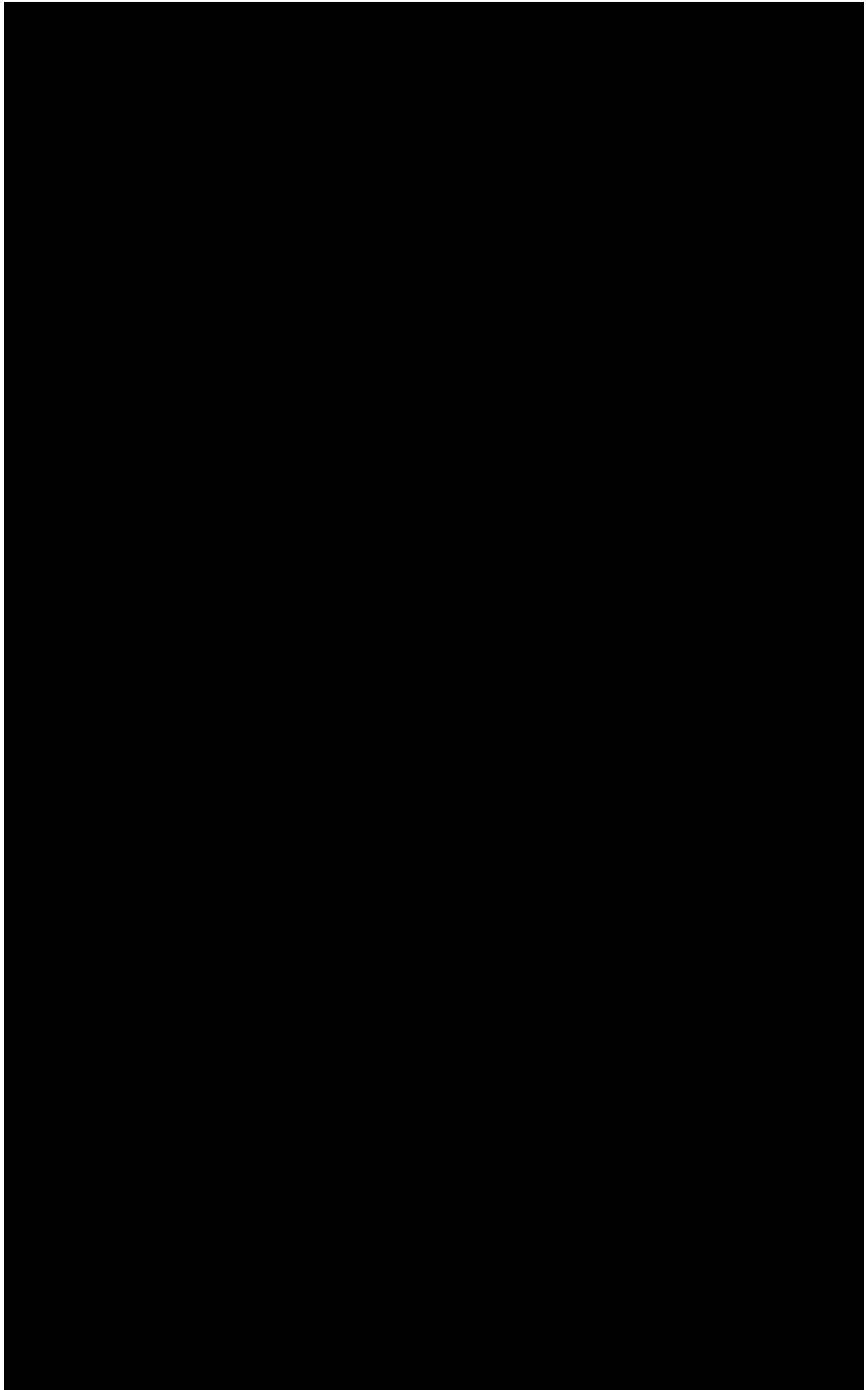
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



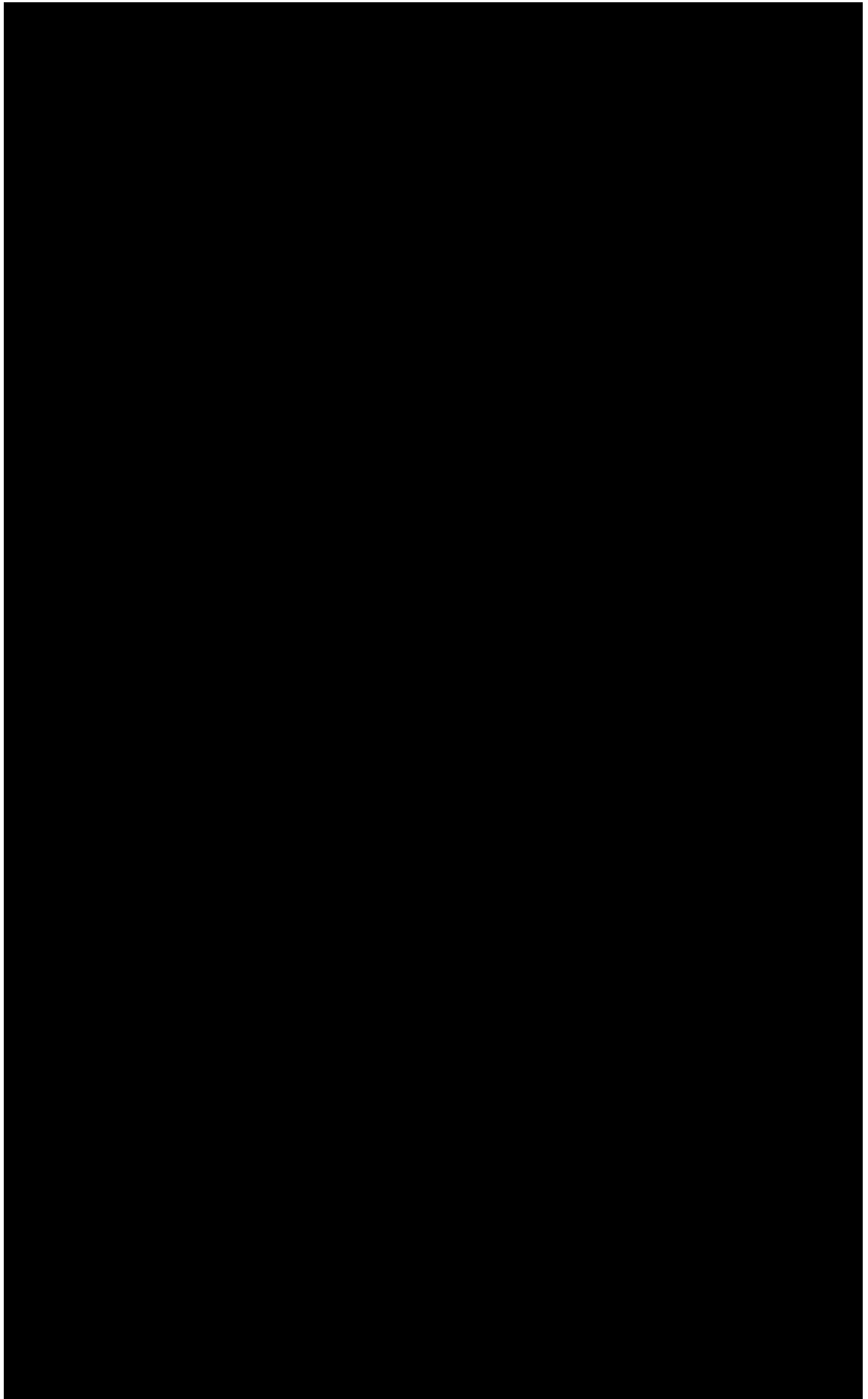
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



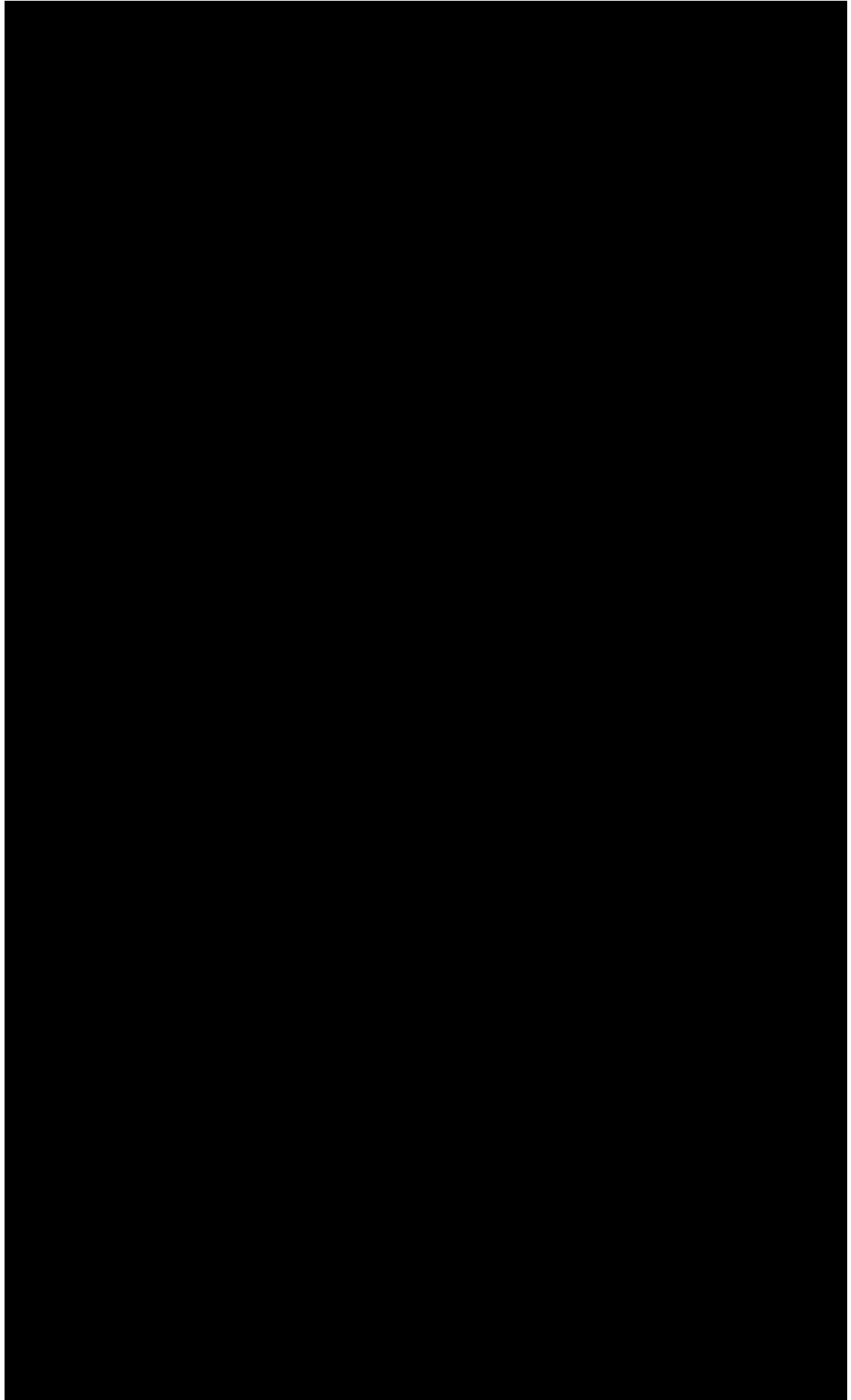
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



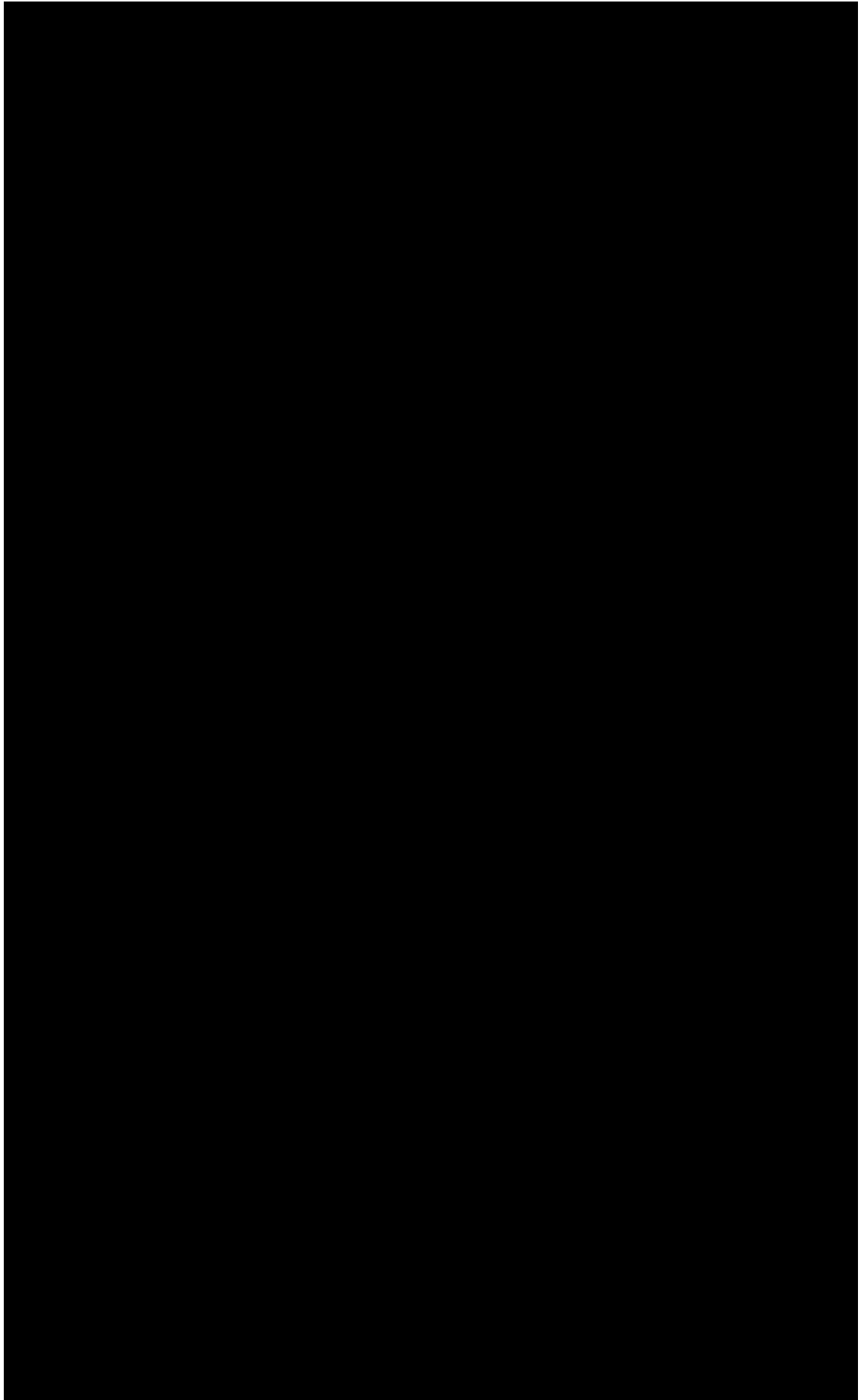
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



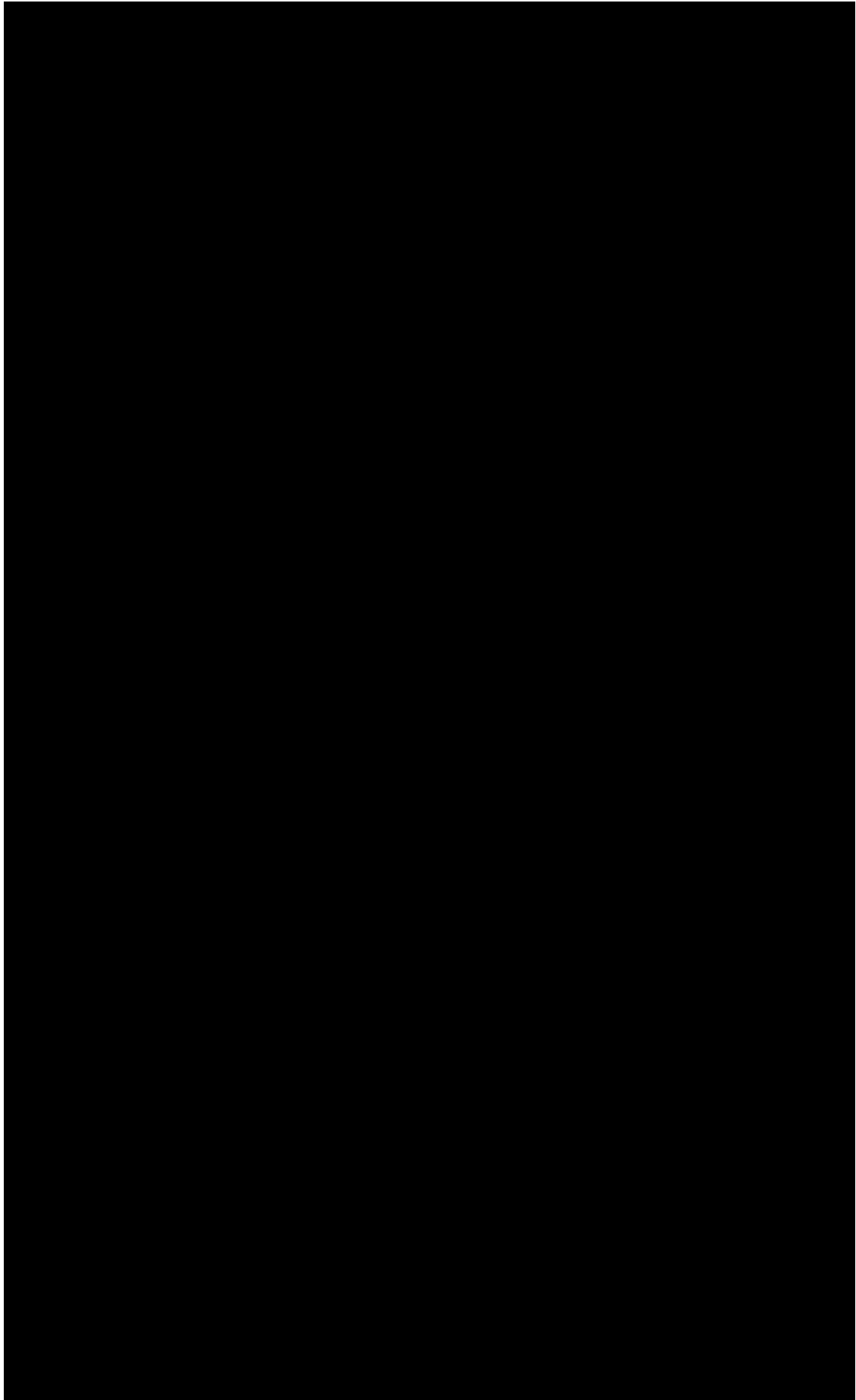
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



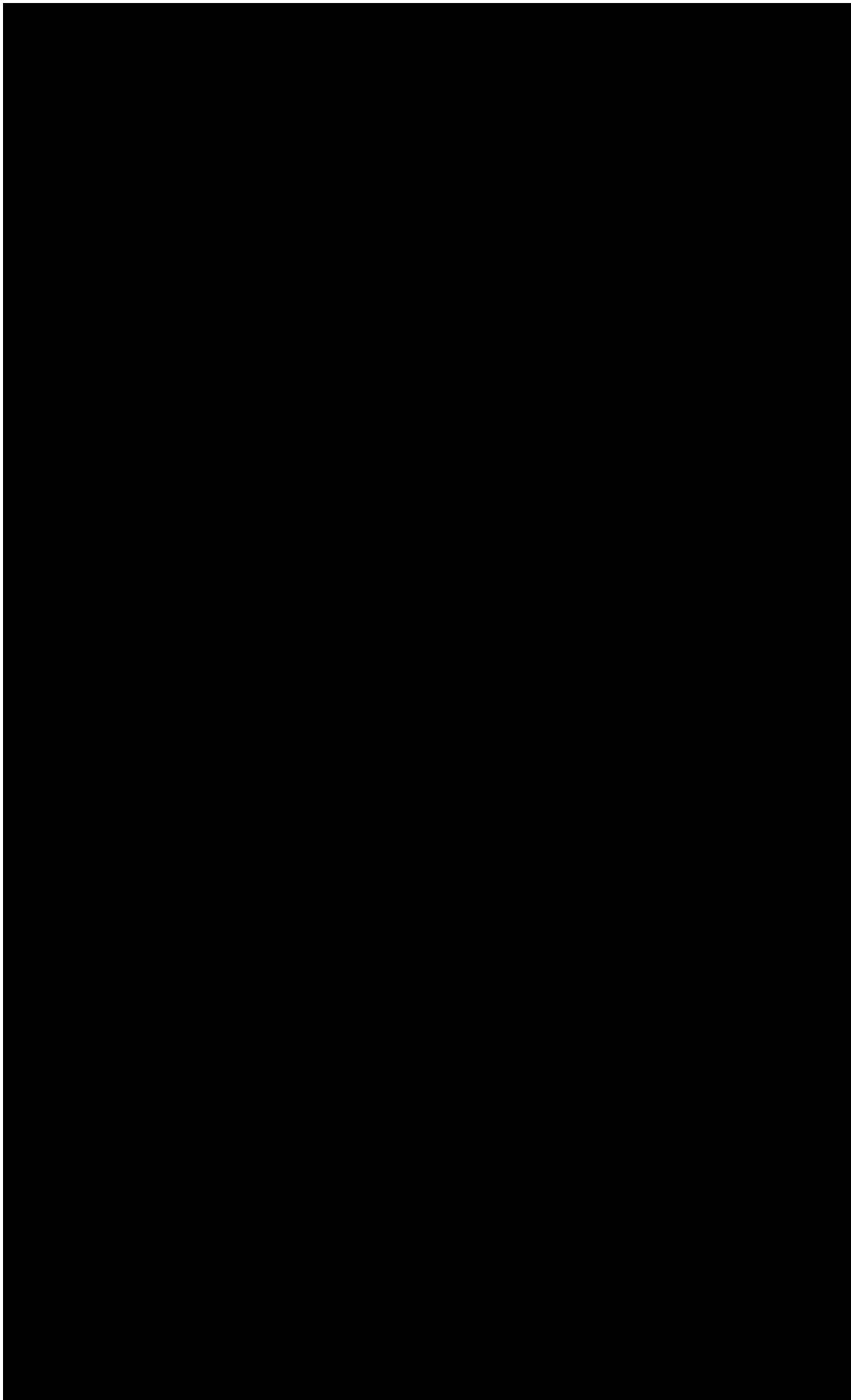
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



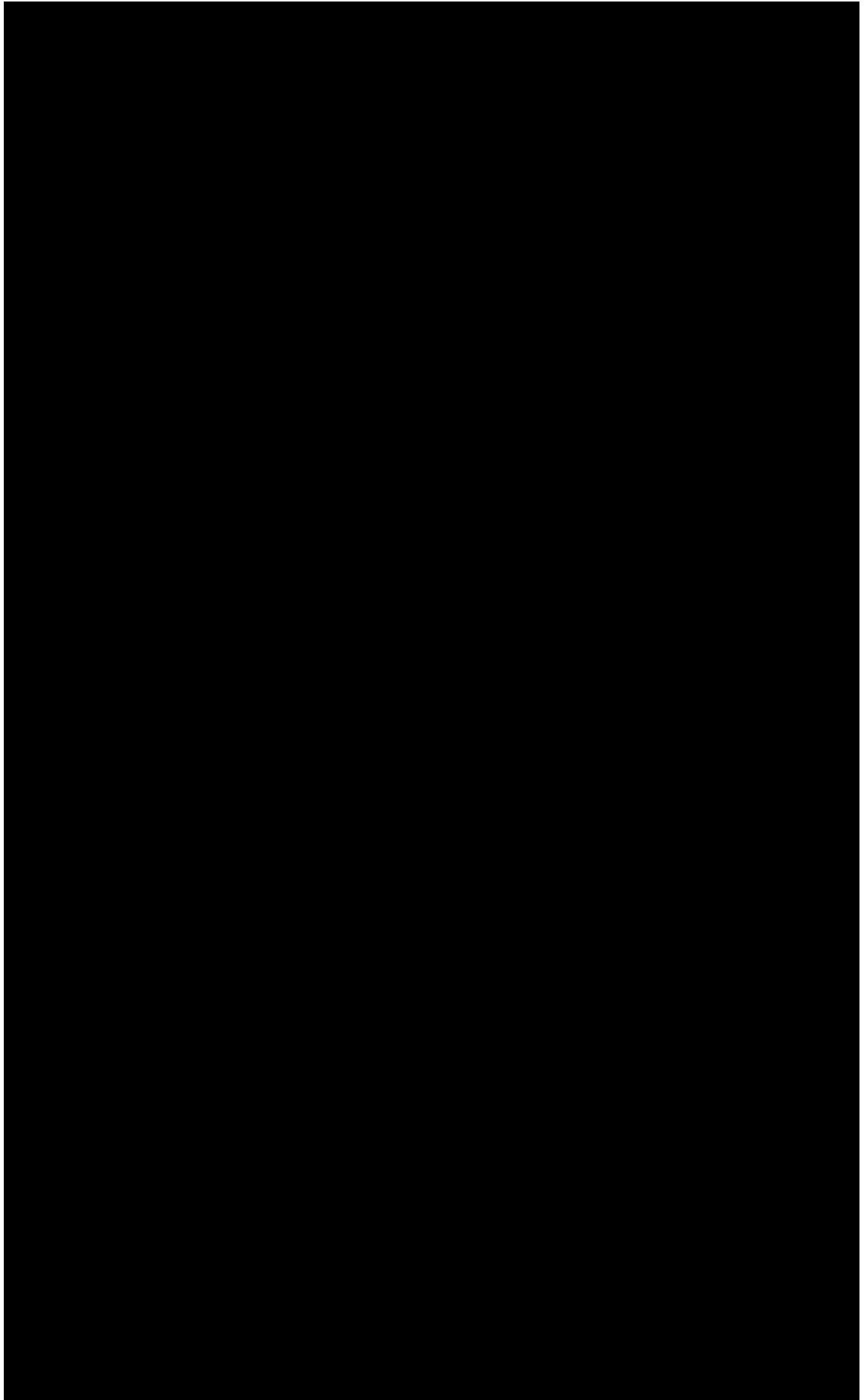
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



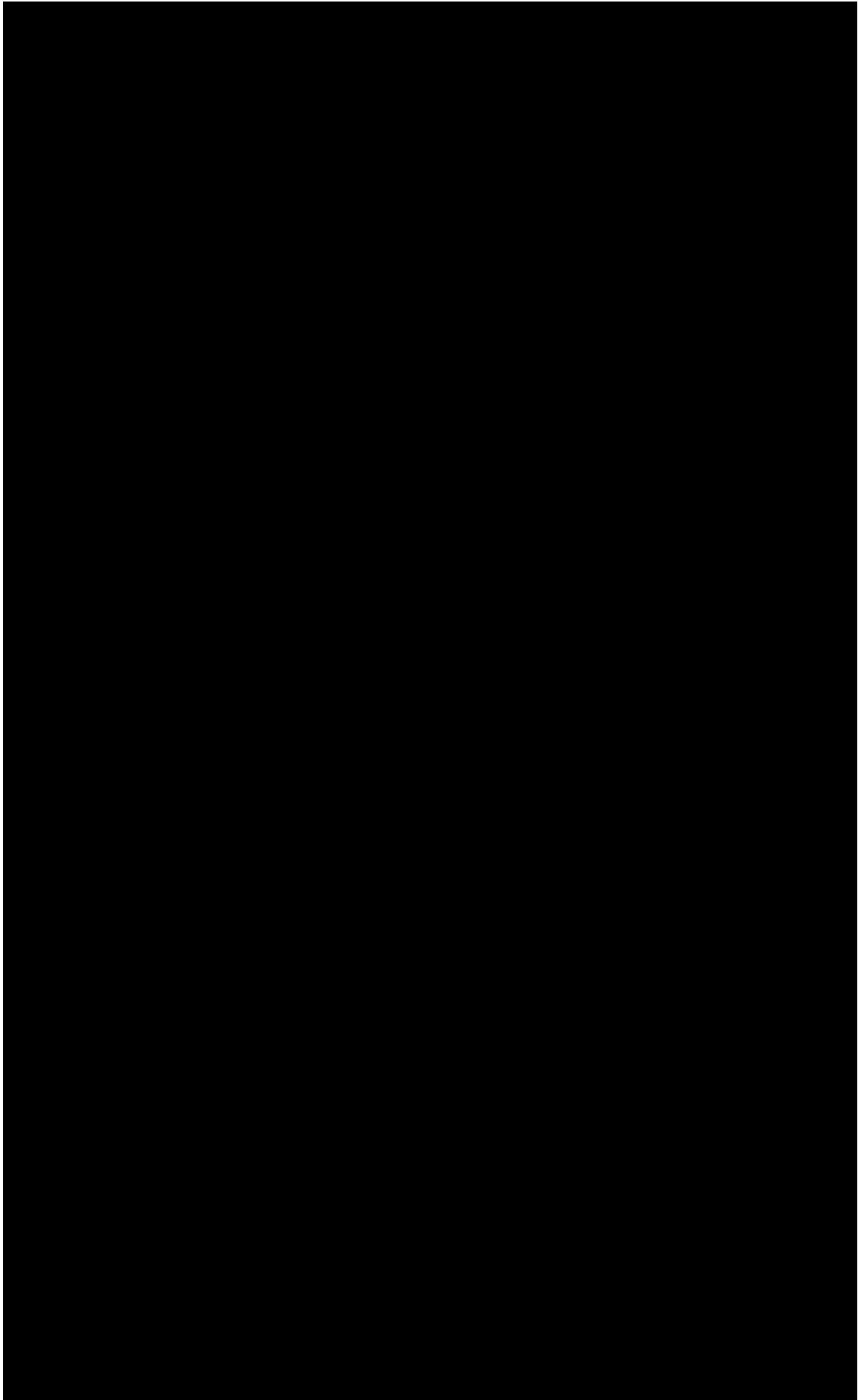
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



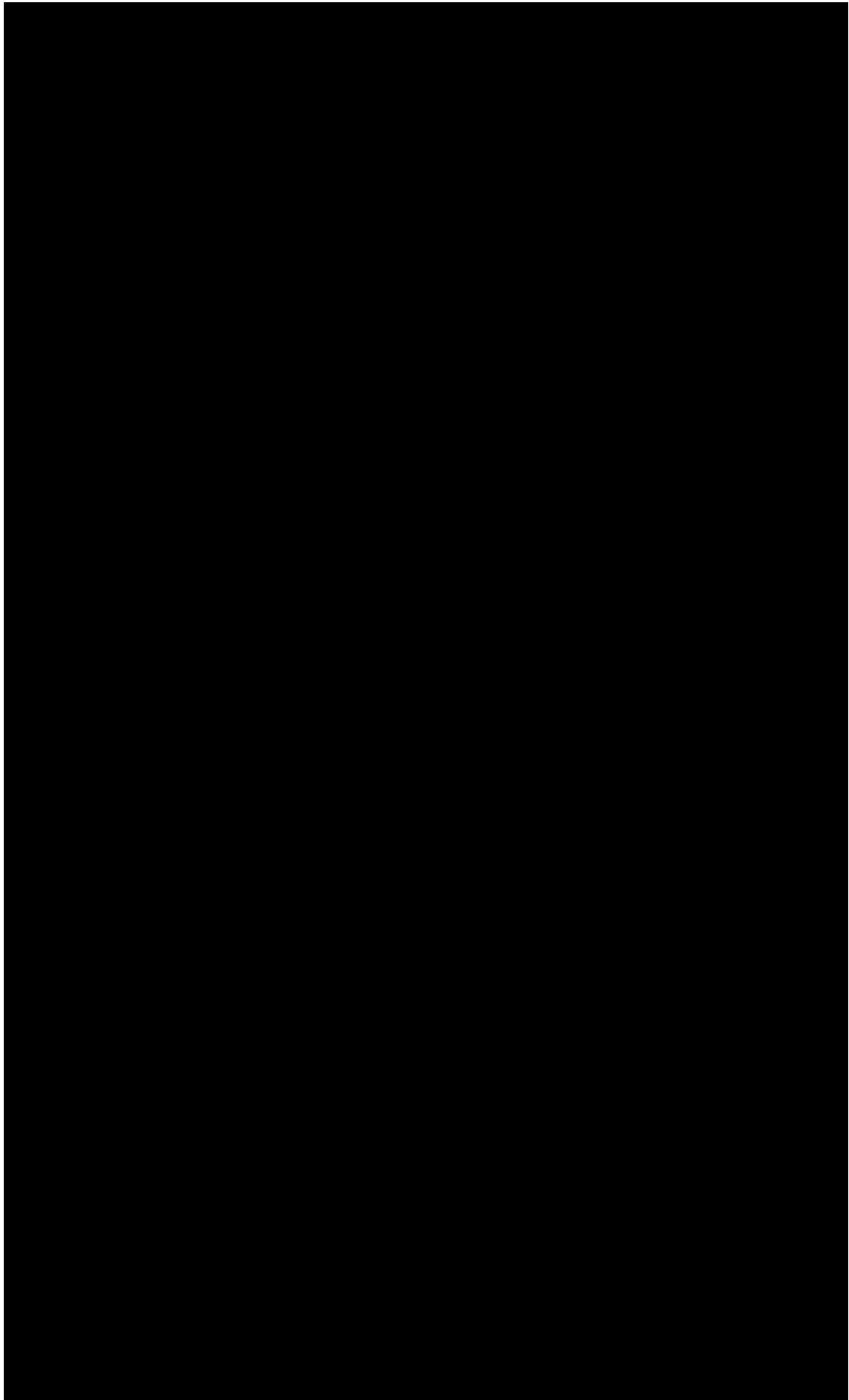
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



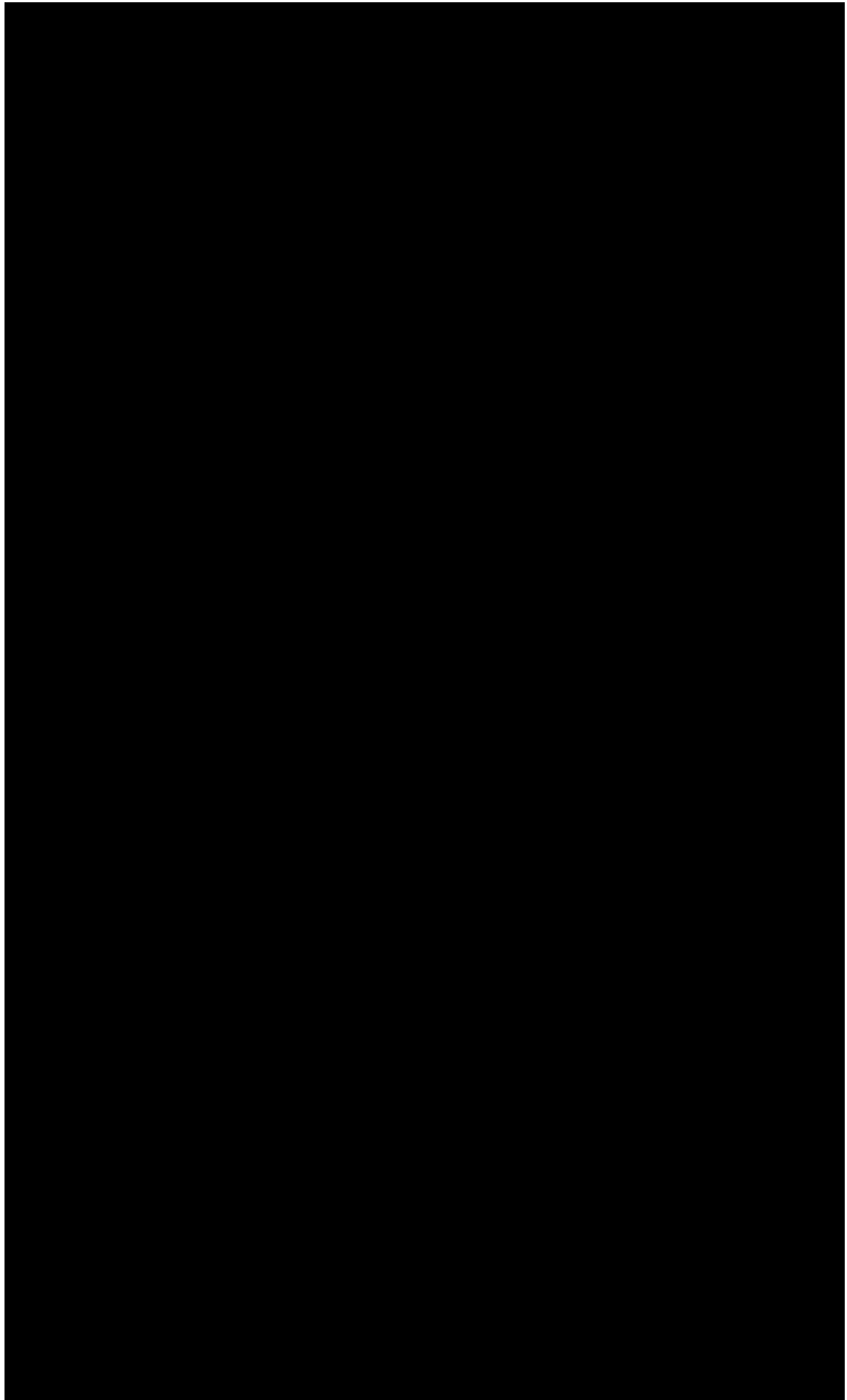
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



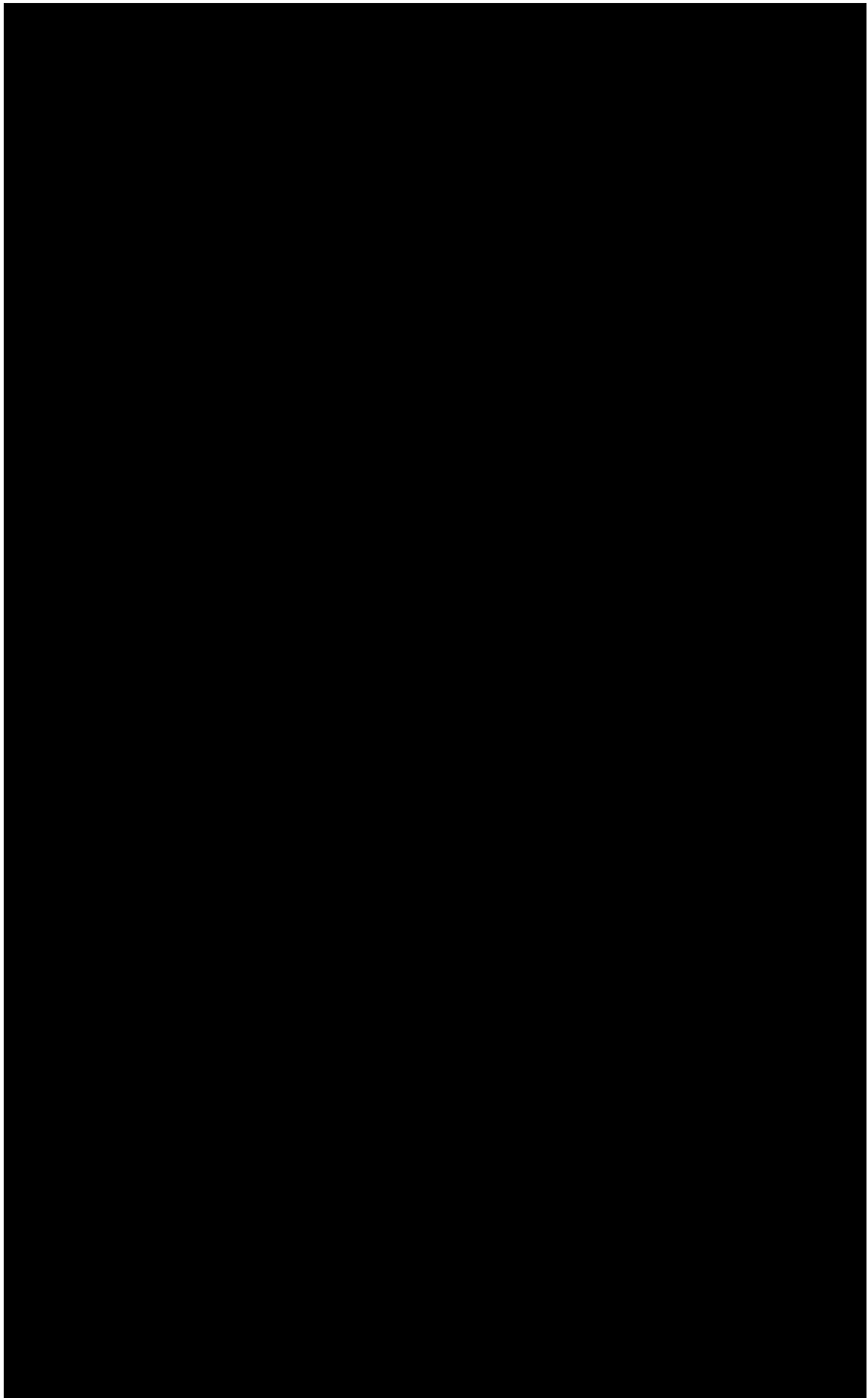
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



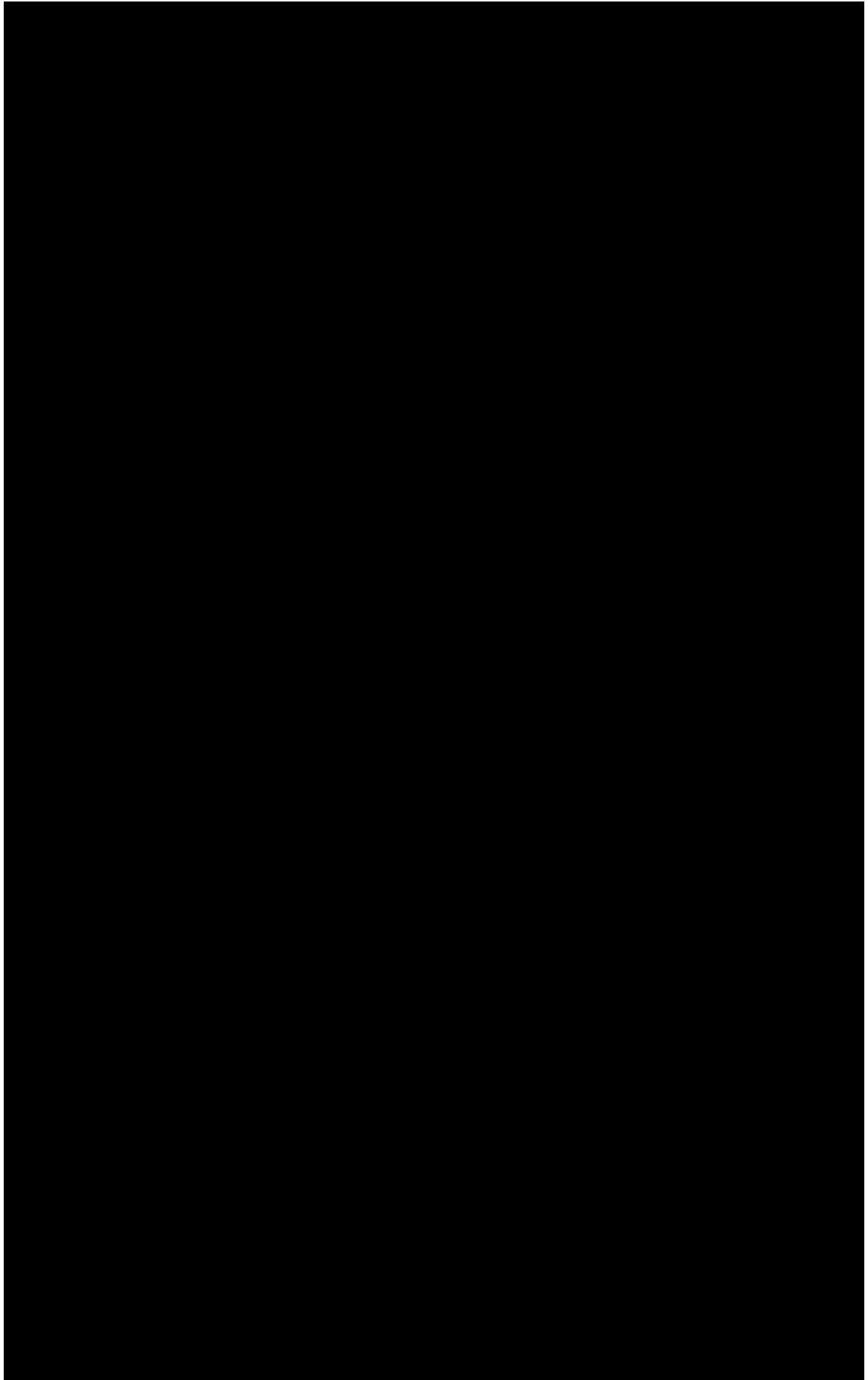
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



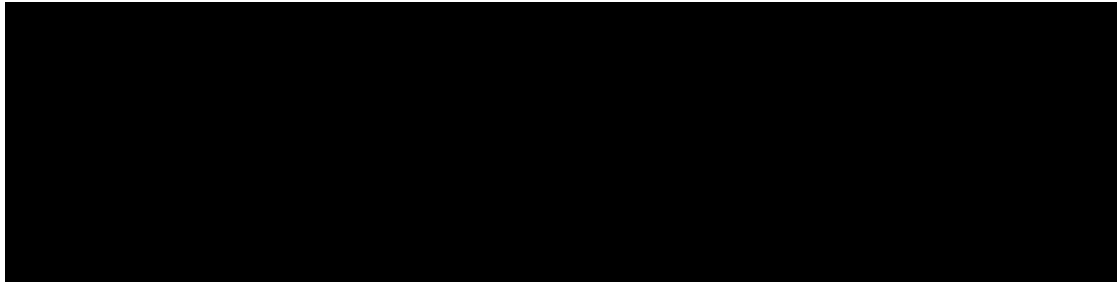
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



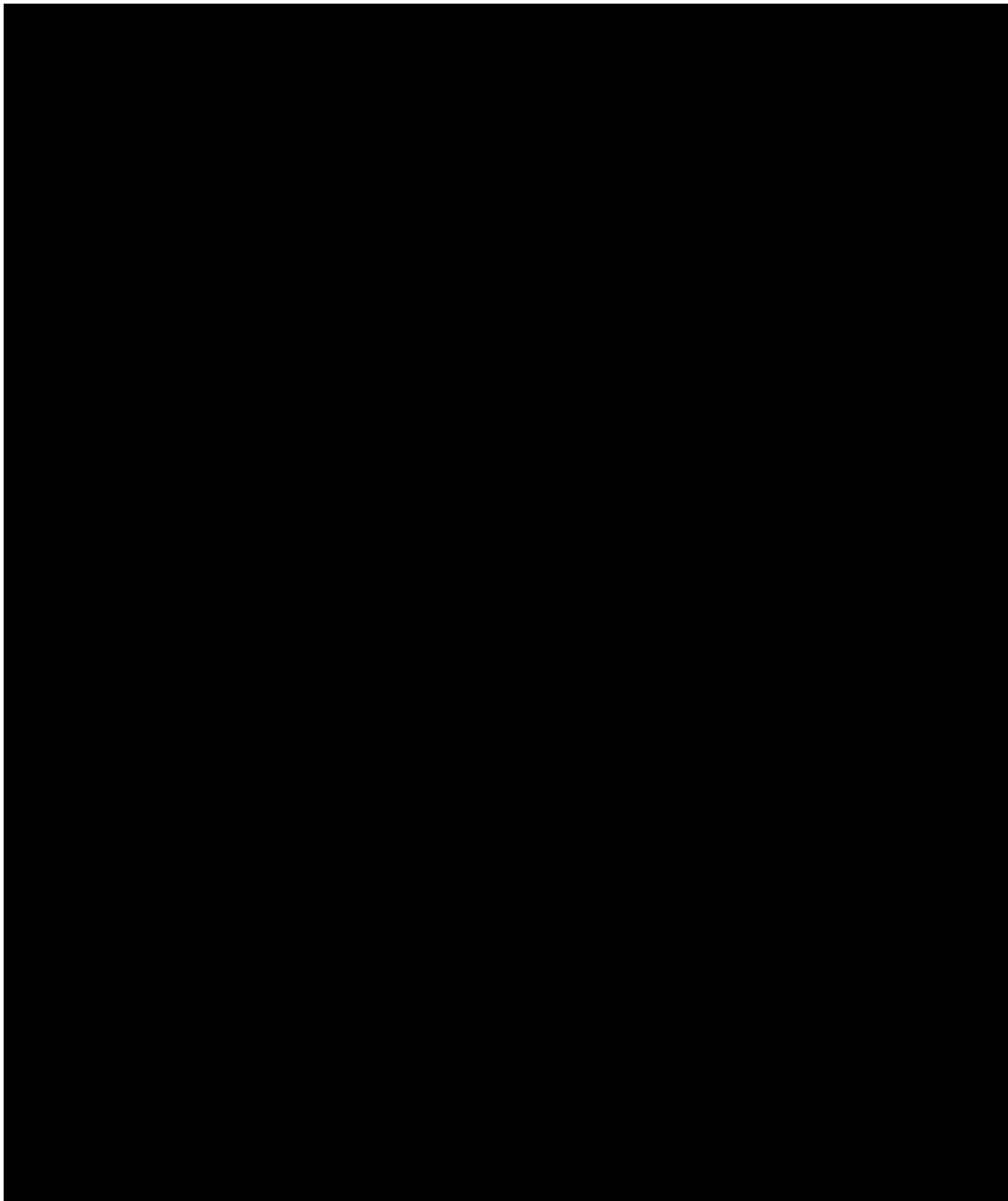
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



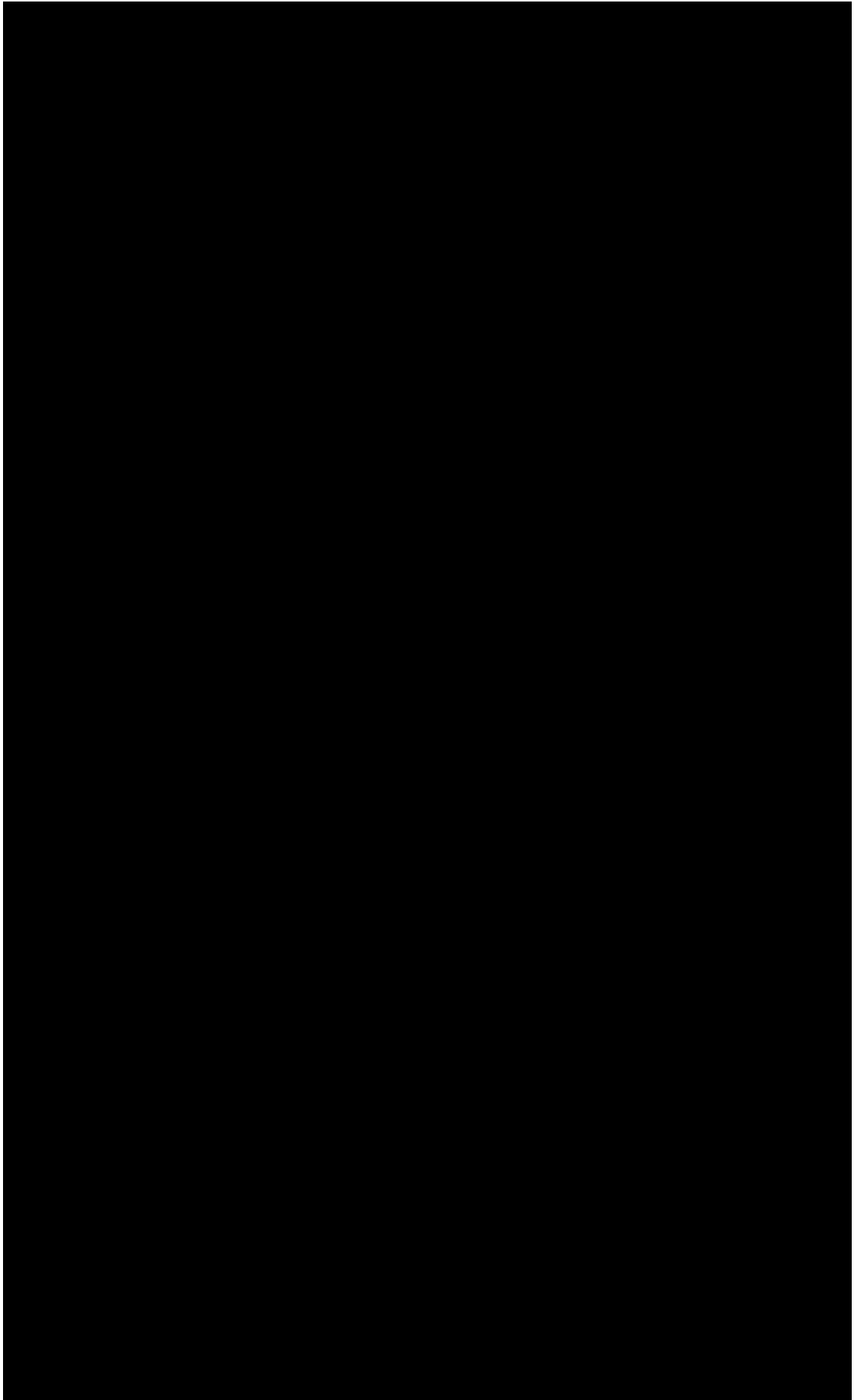
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



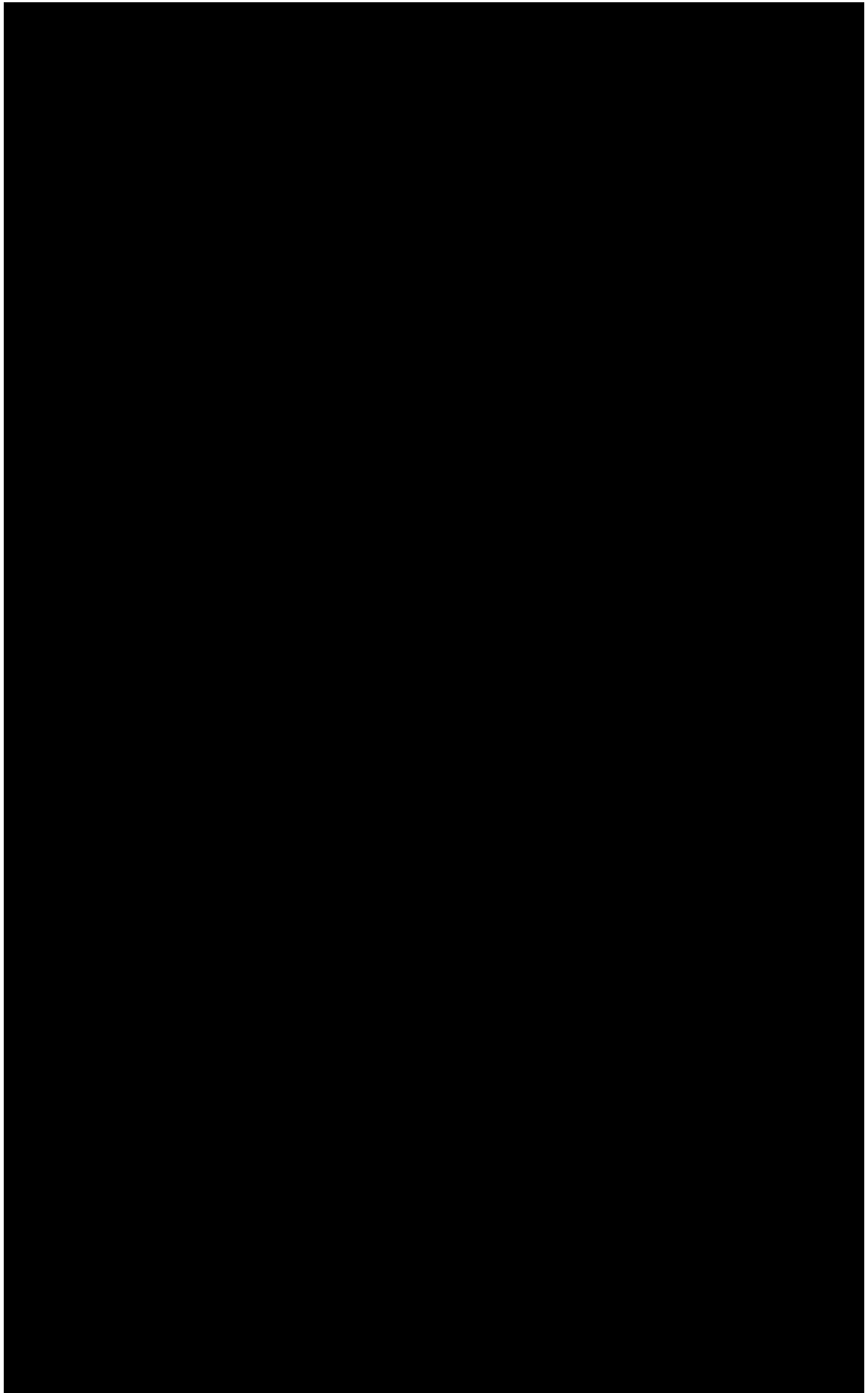
A We had conversations with the people who built the algorithm, and they assured us that we were within line.



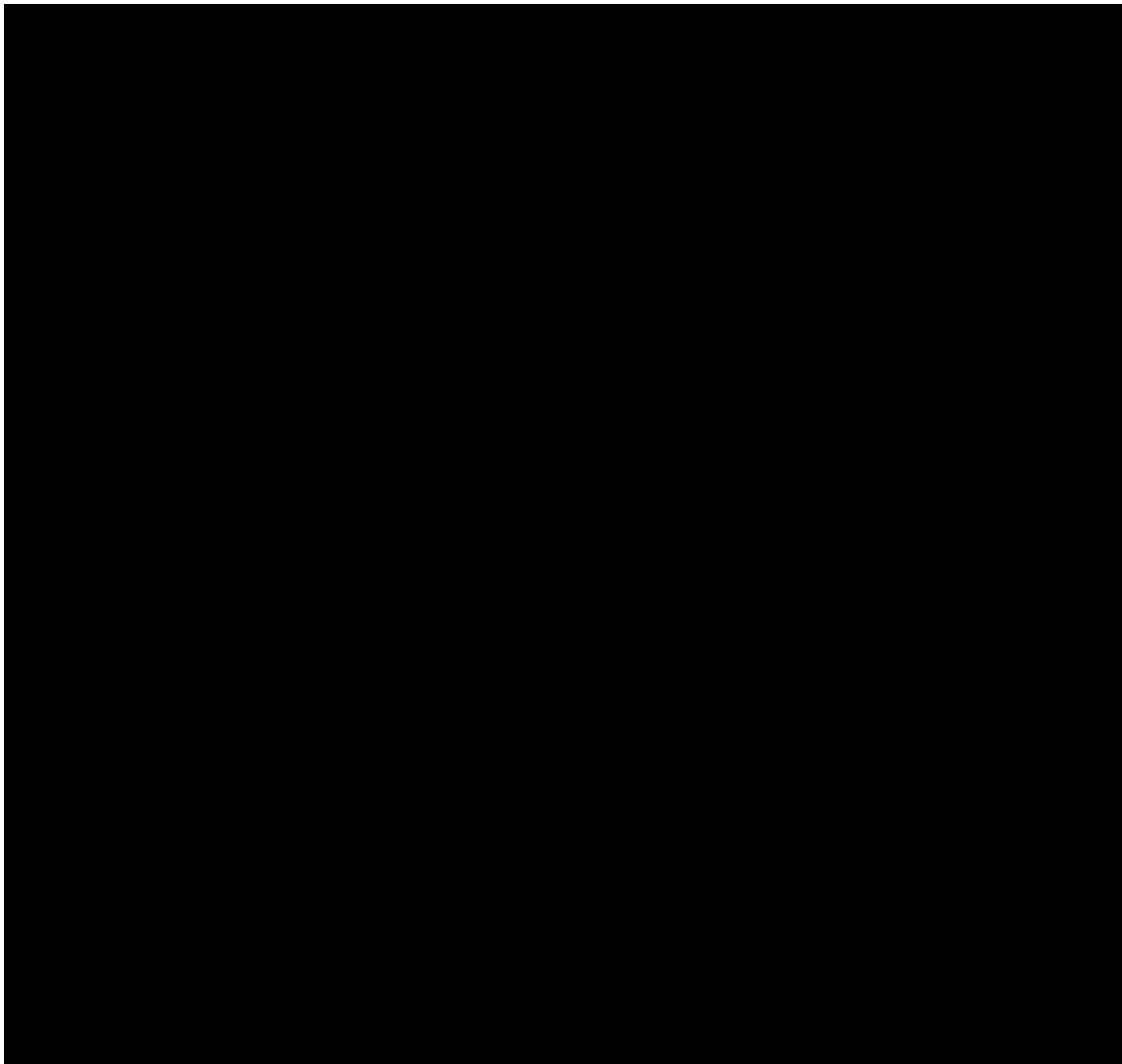
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



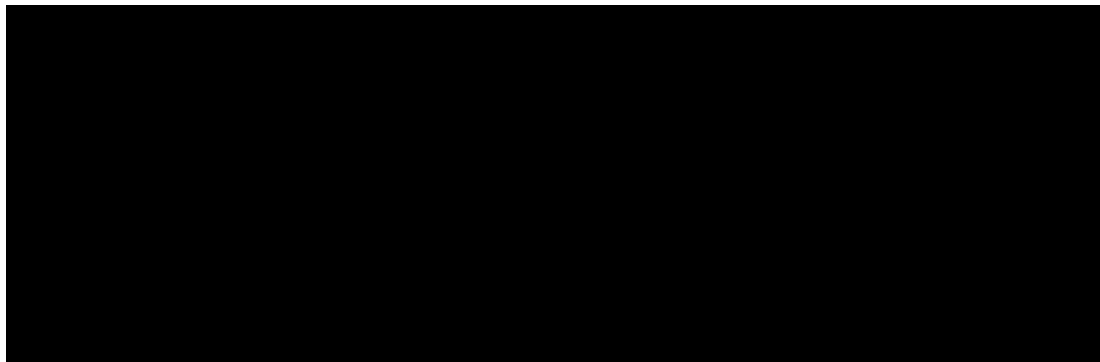
1
2
3
4
5
6
7
8
9
10
11
12
13
14



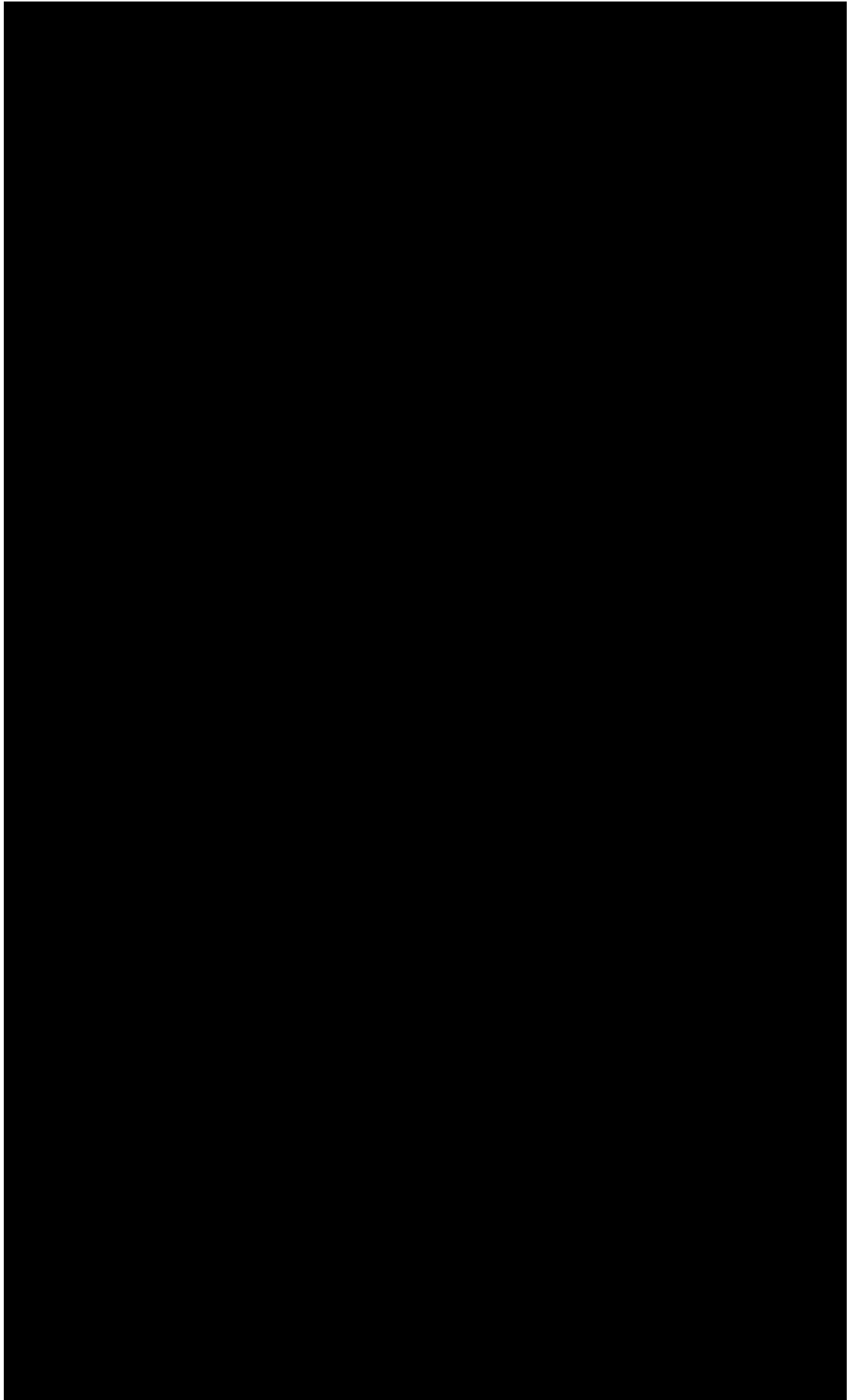
15 Q Okay. What you were fixing to do --
16 what you were intending to do, I should say, with
17 this algorithm was you wanted to tweak it up,
18 right?

19 A I wanted to eliminate false positives.

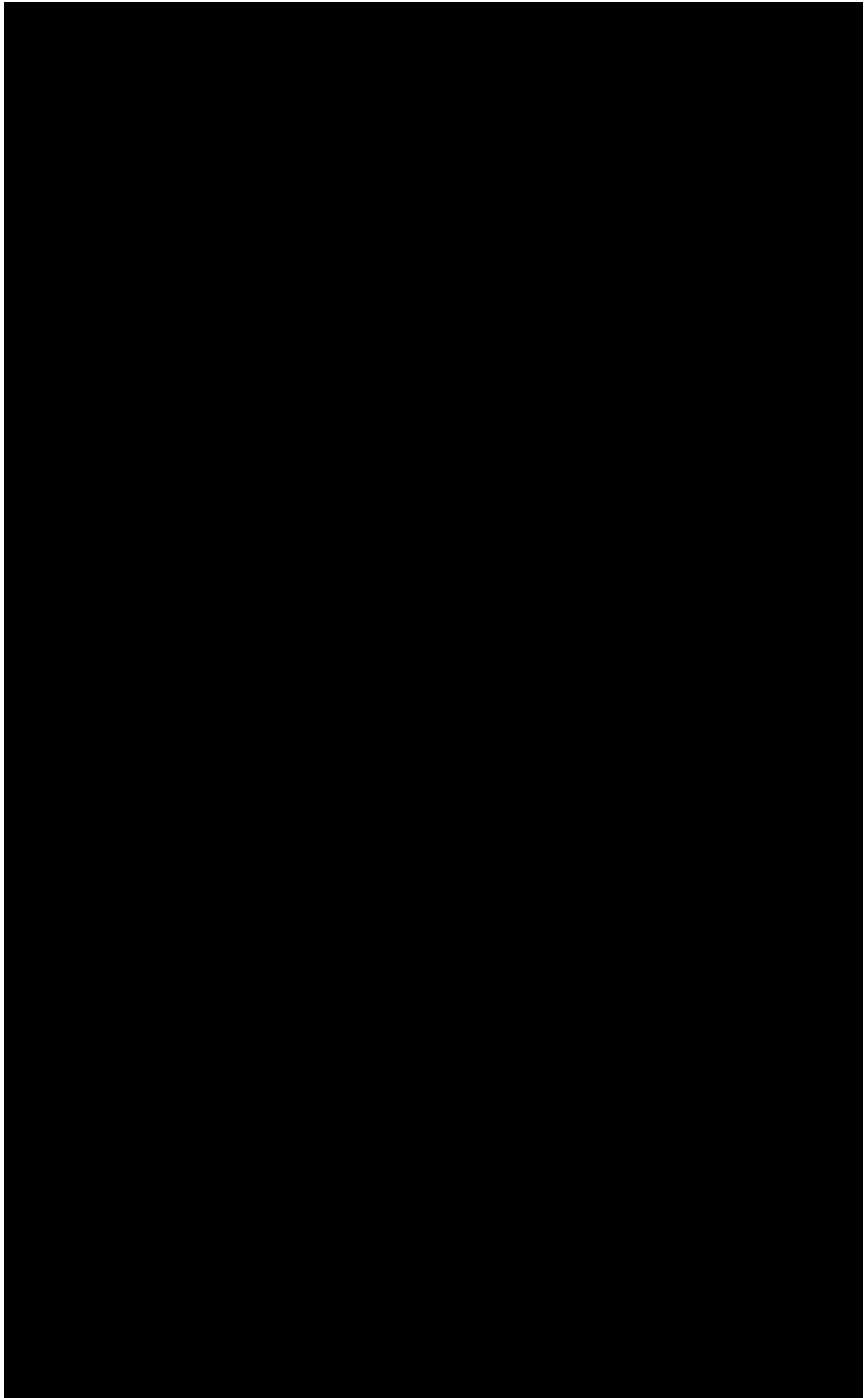
20
21
22
23
24



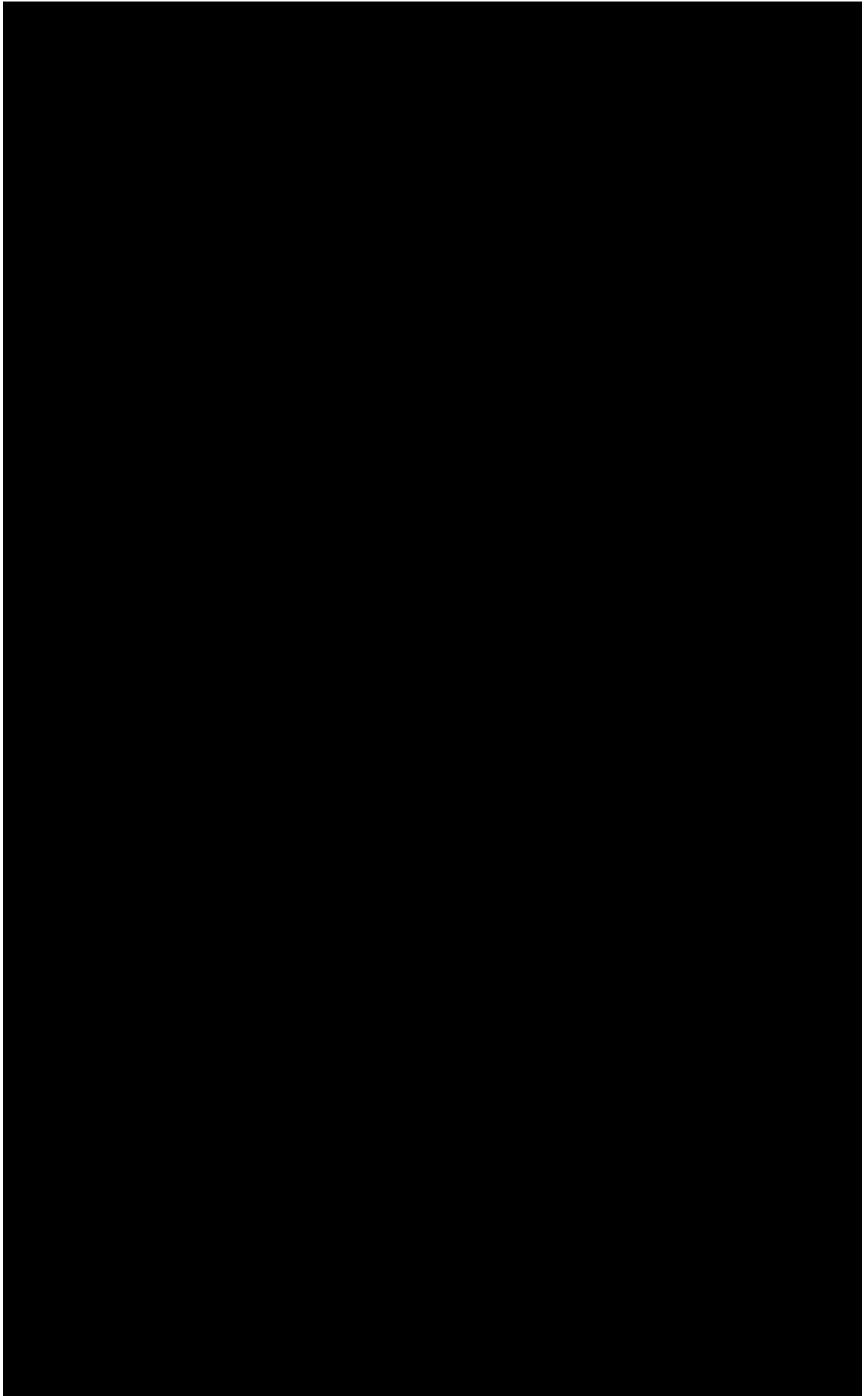
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



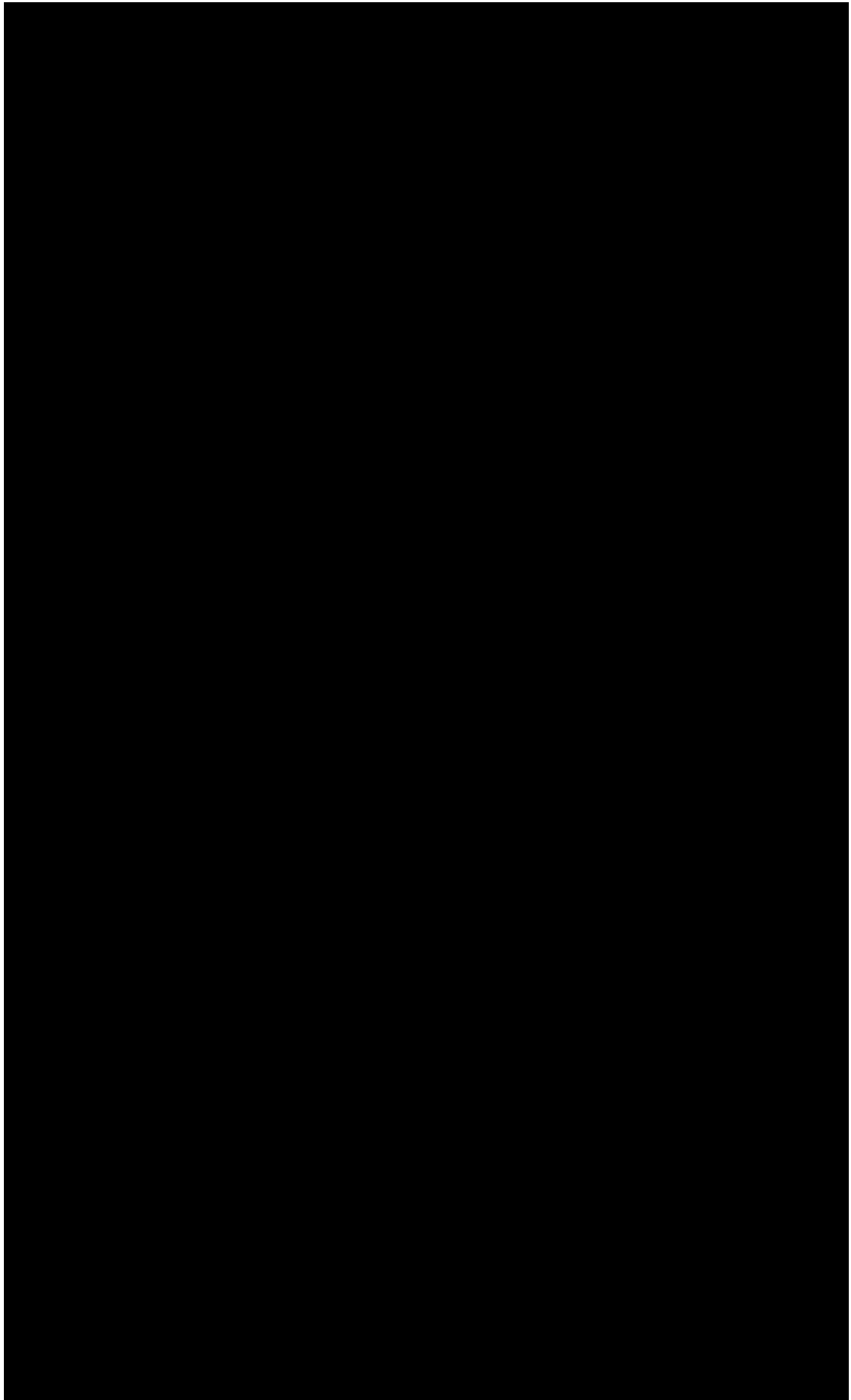
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



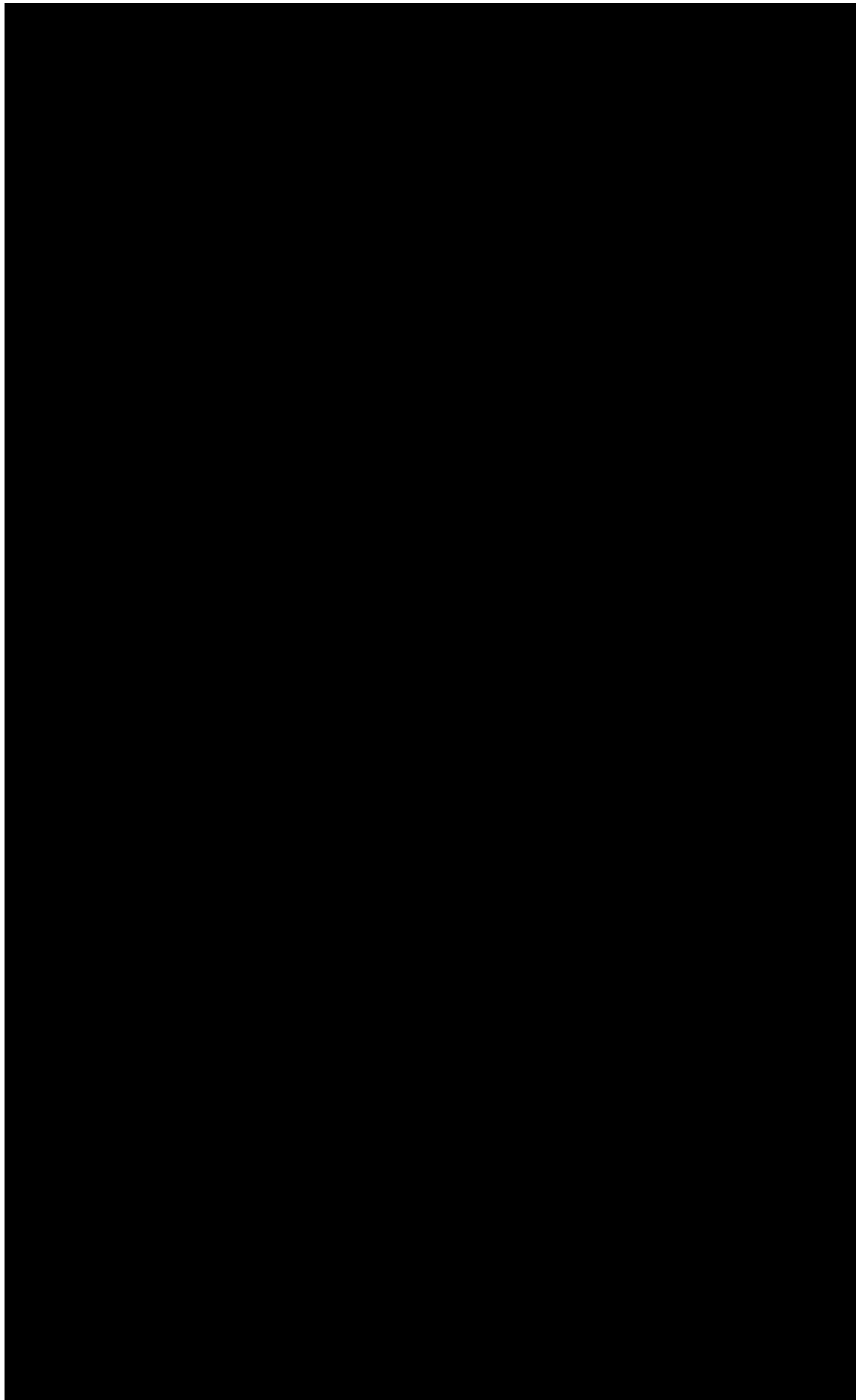
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



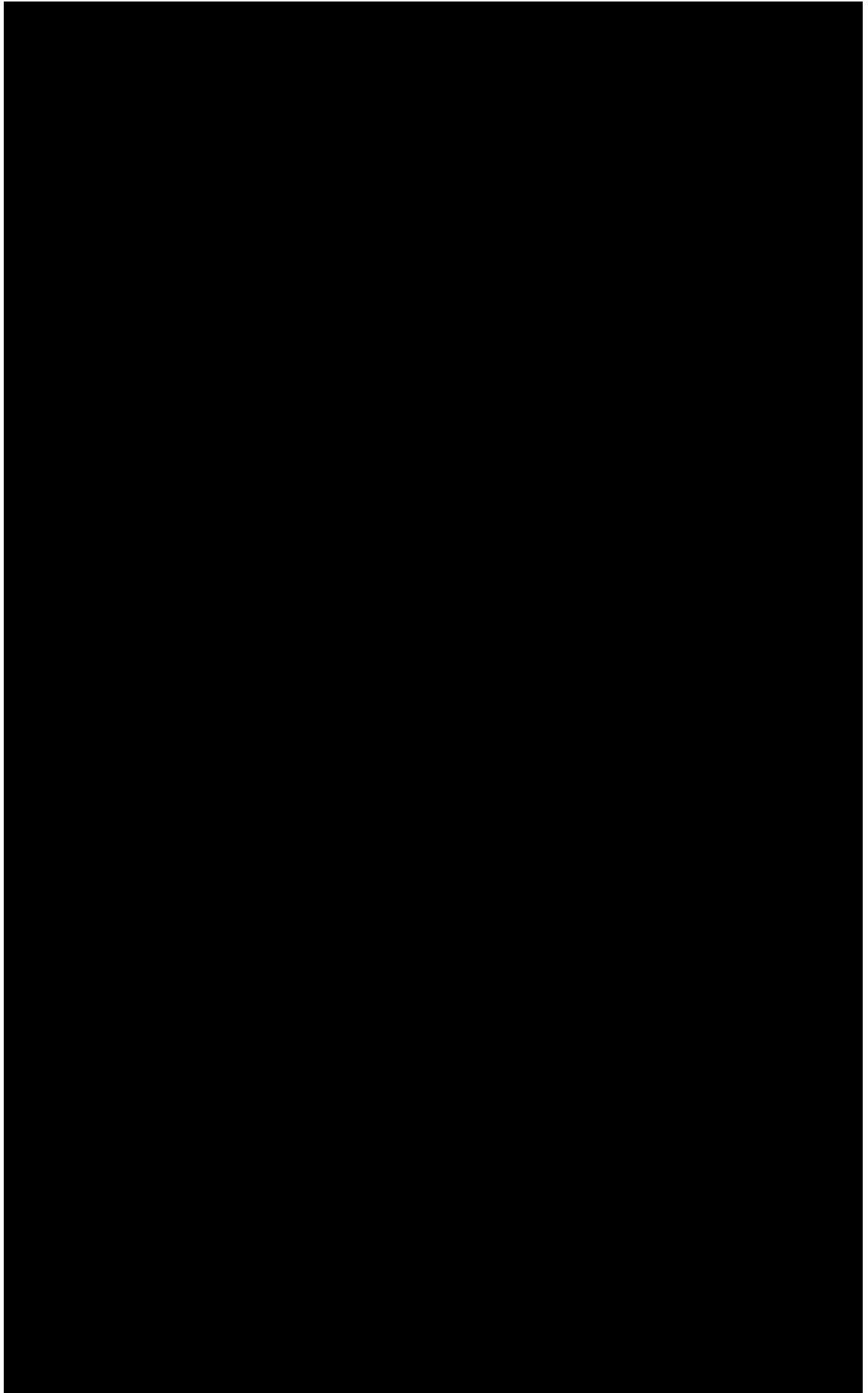
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



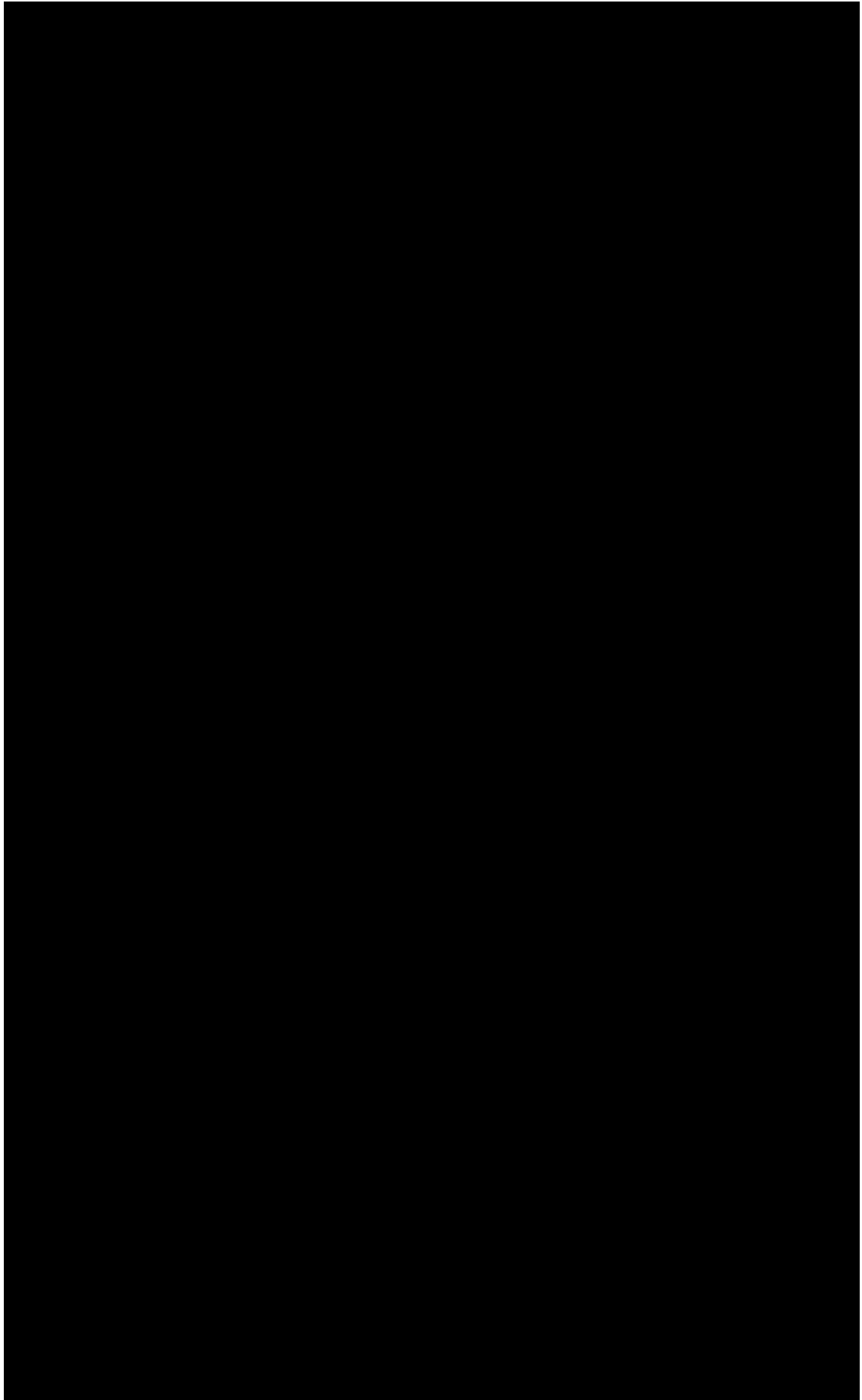
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



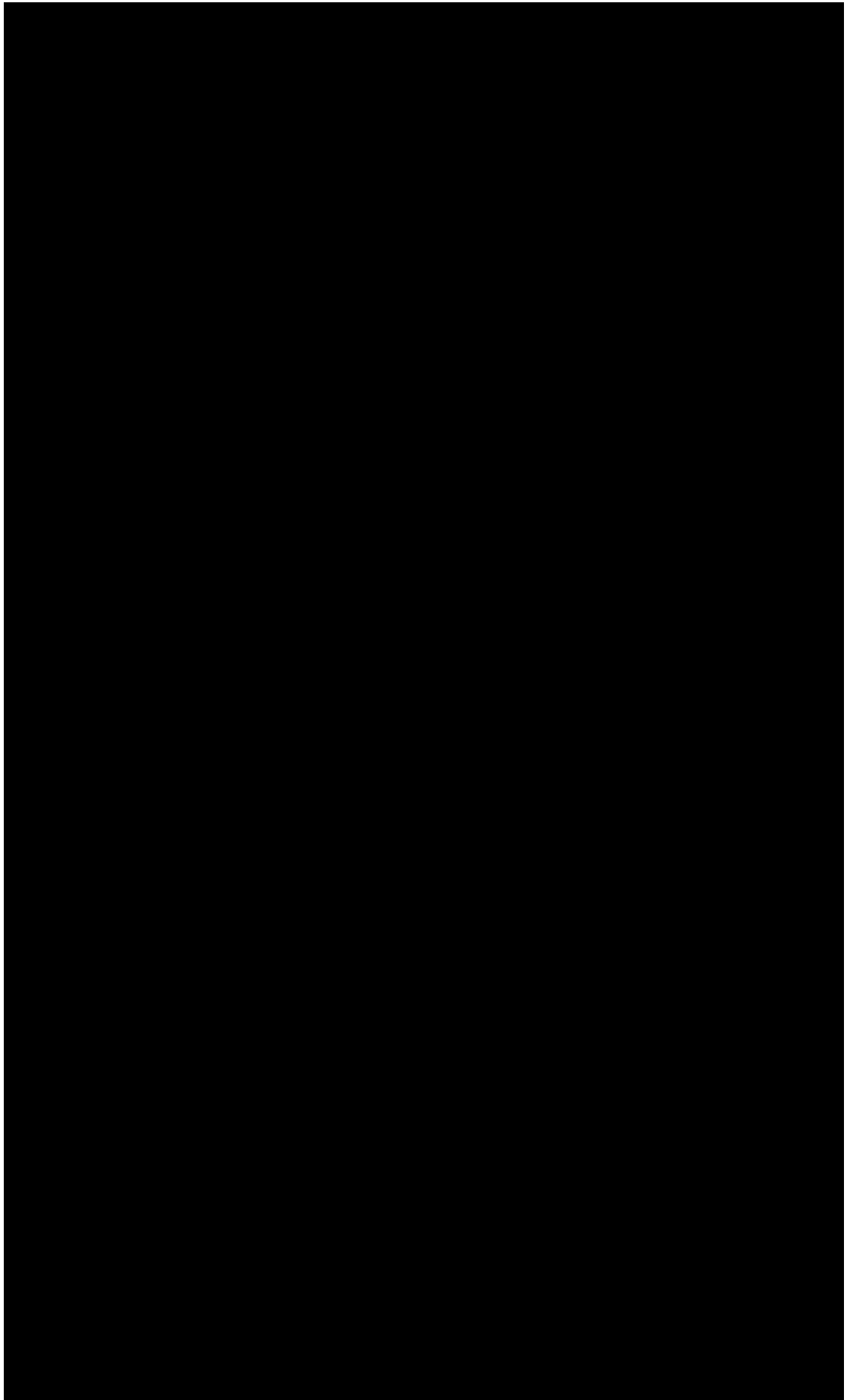
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



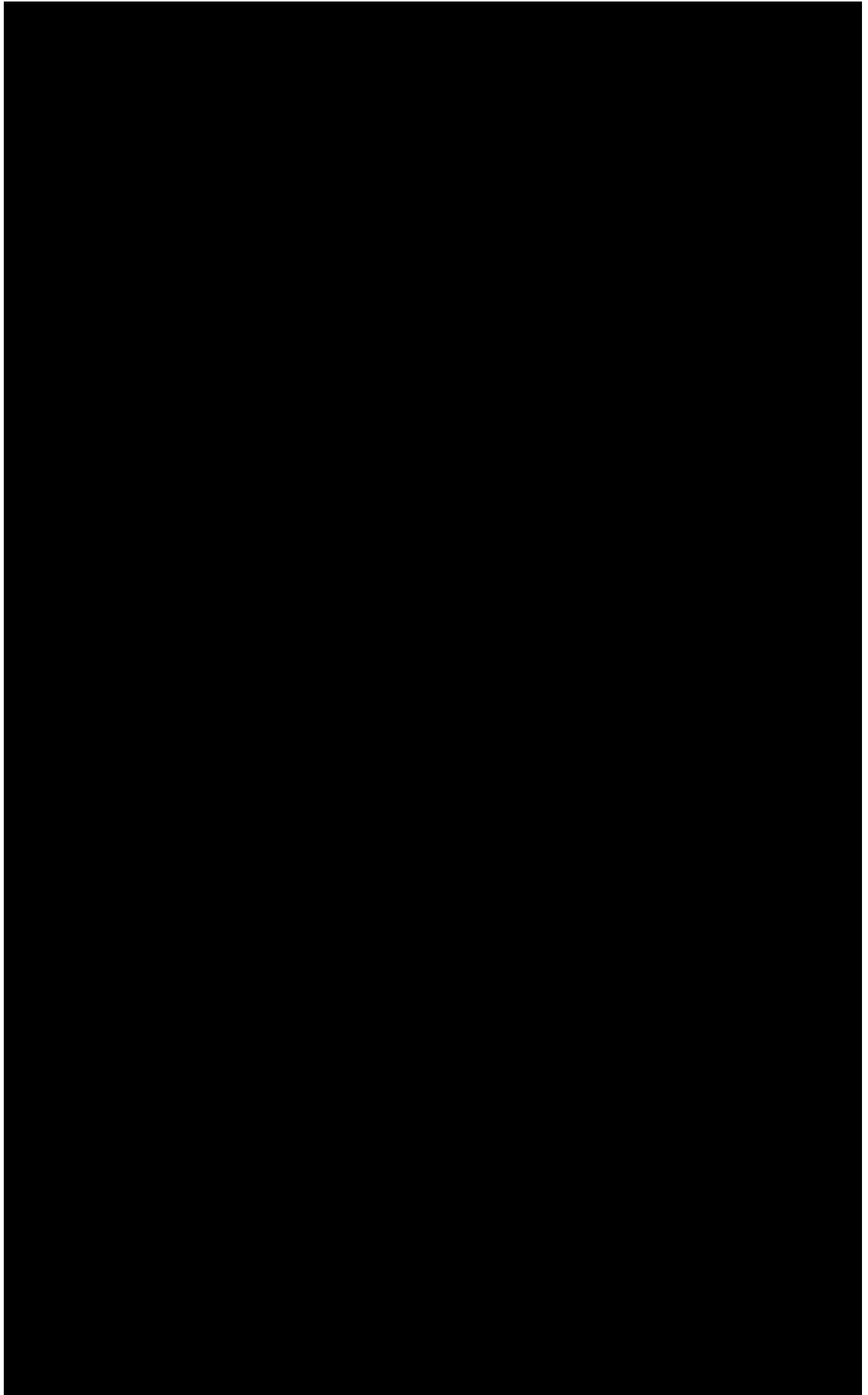
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



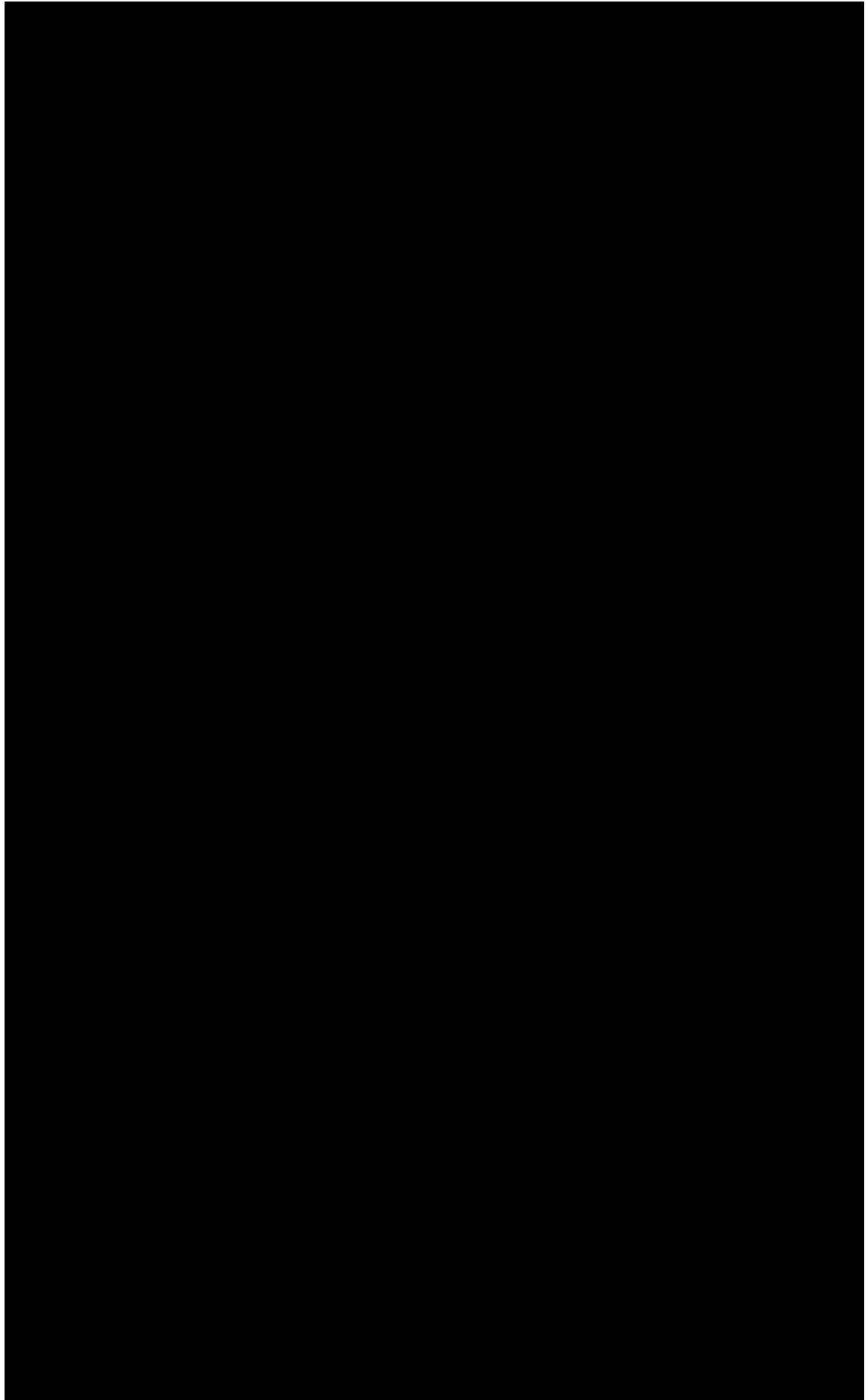
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



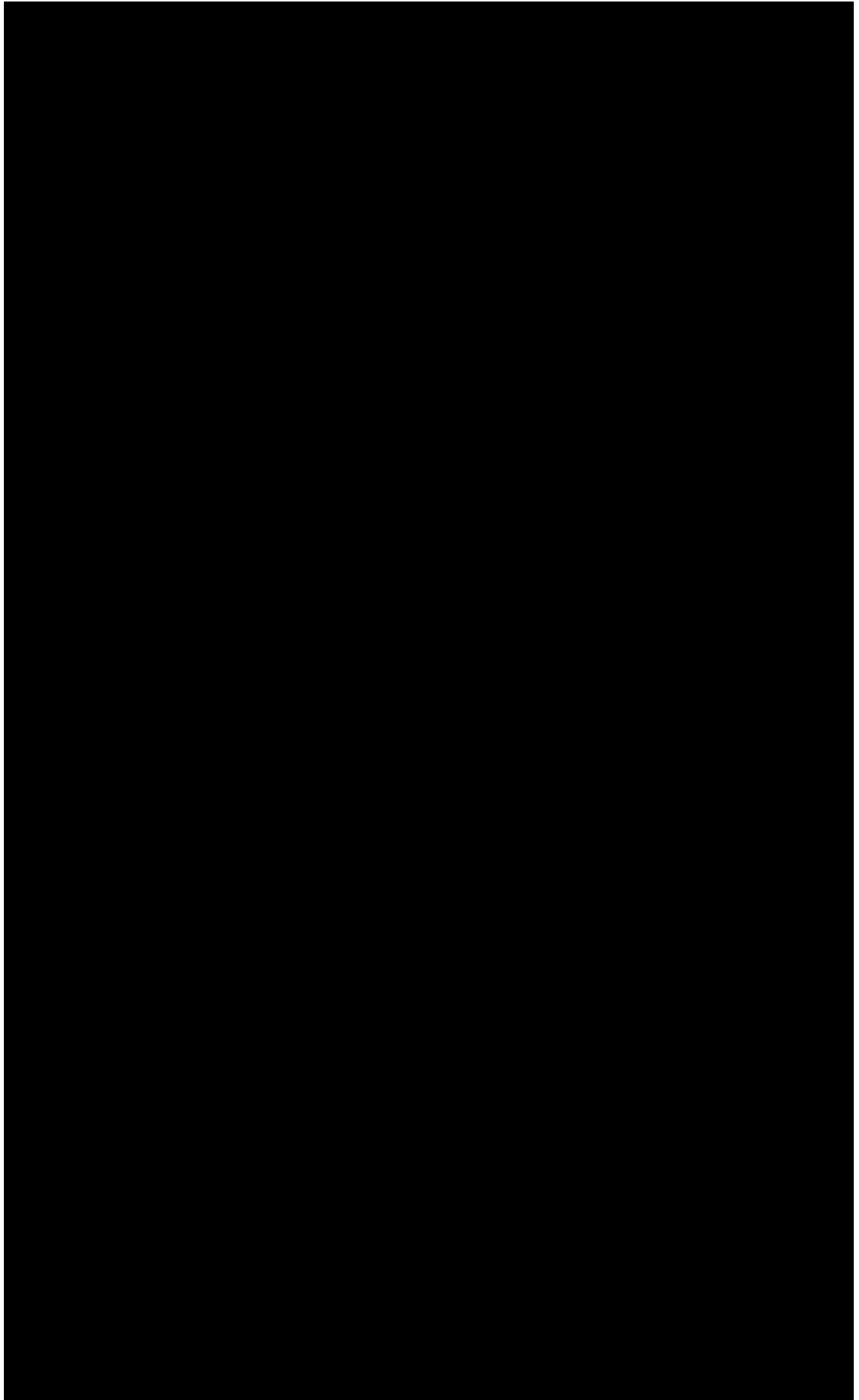
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



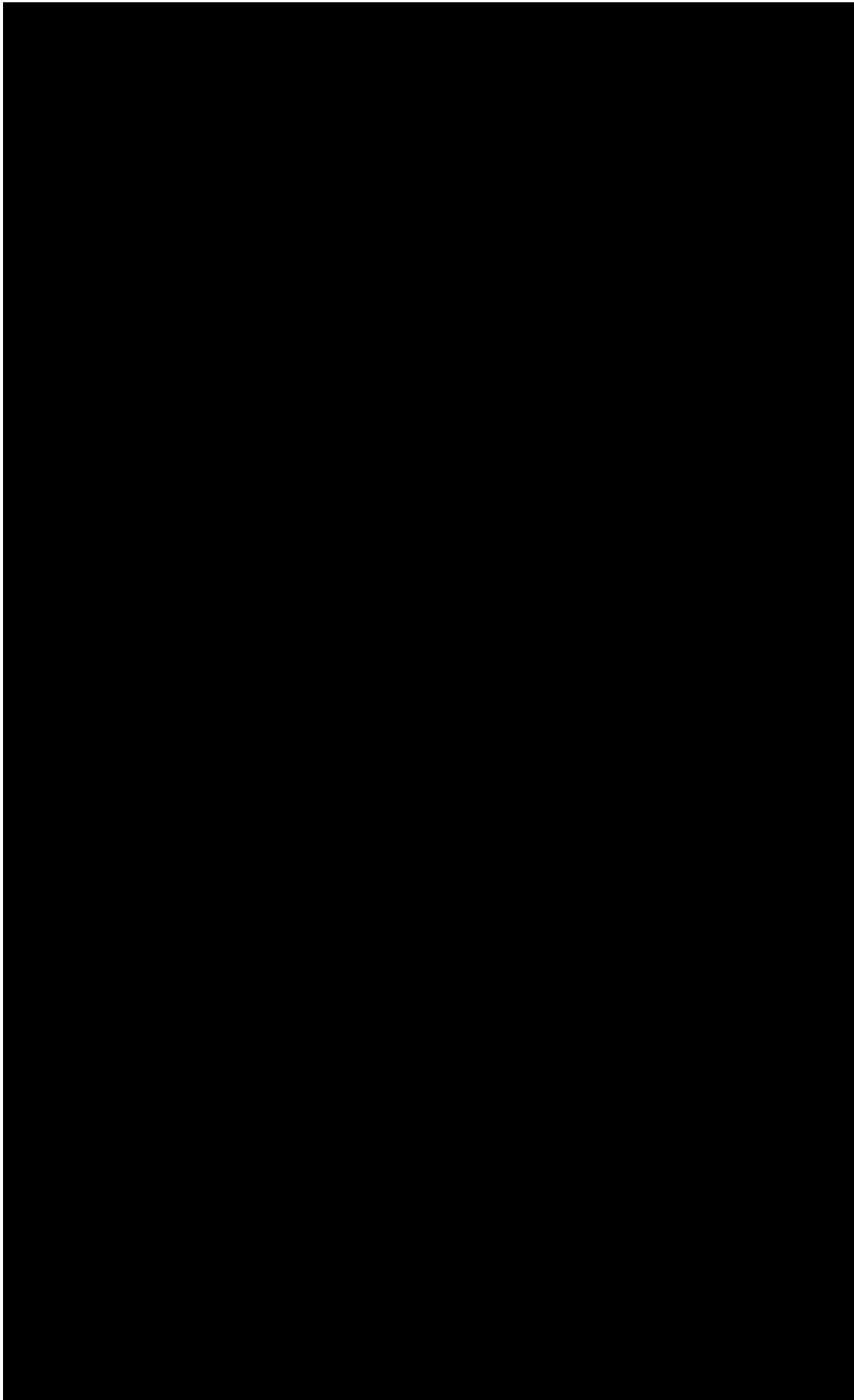
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



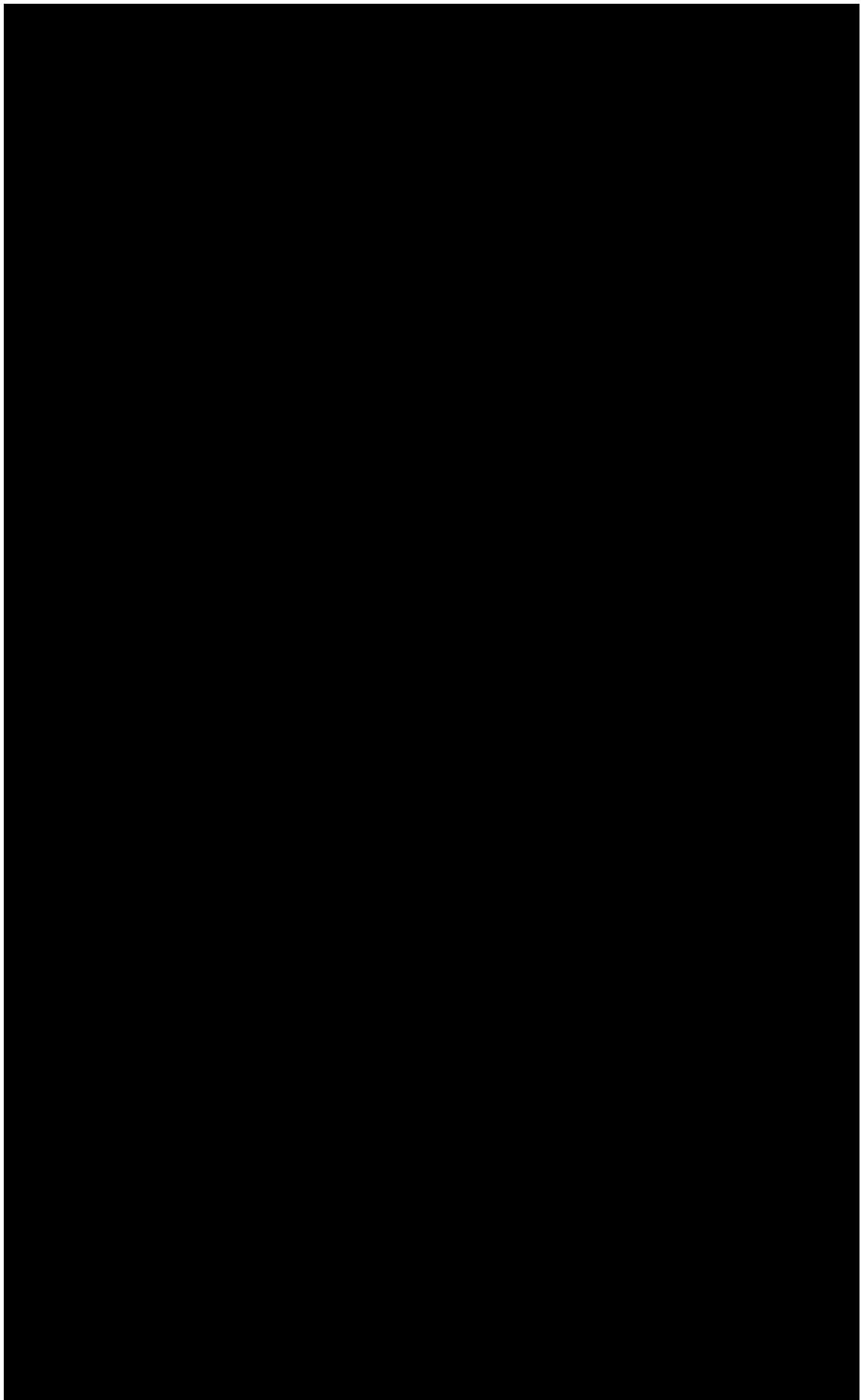
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



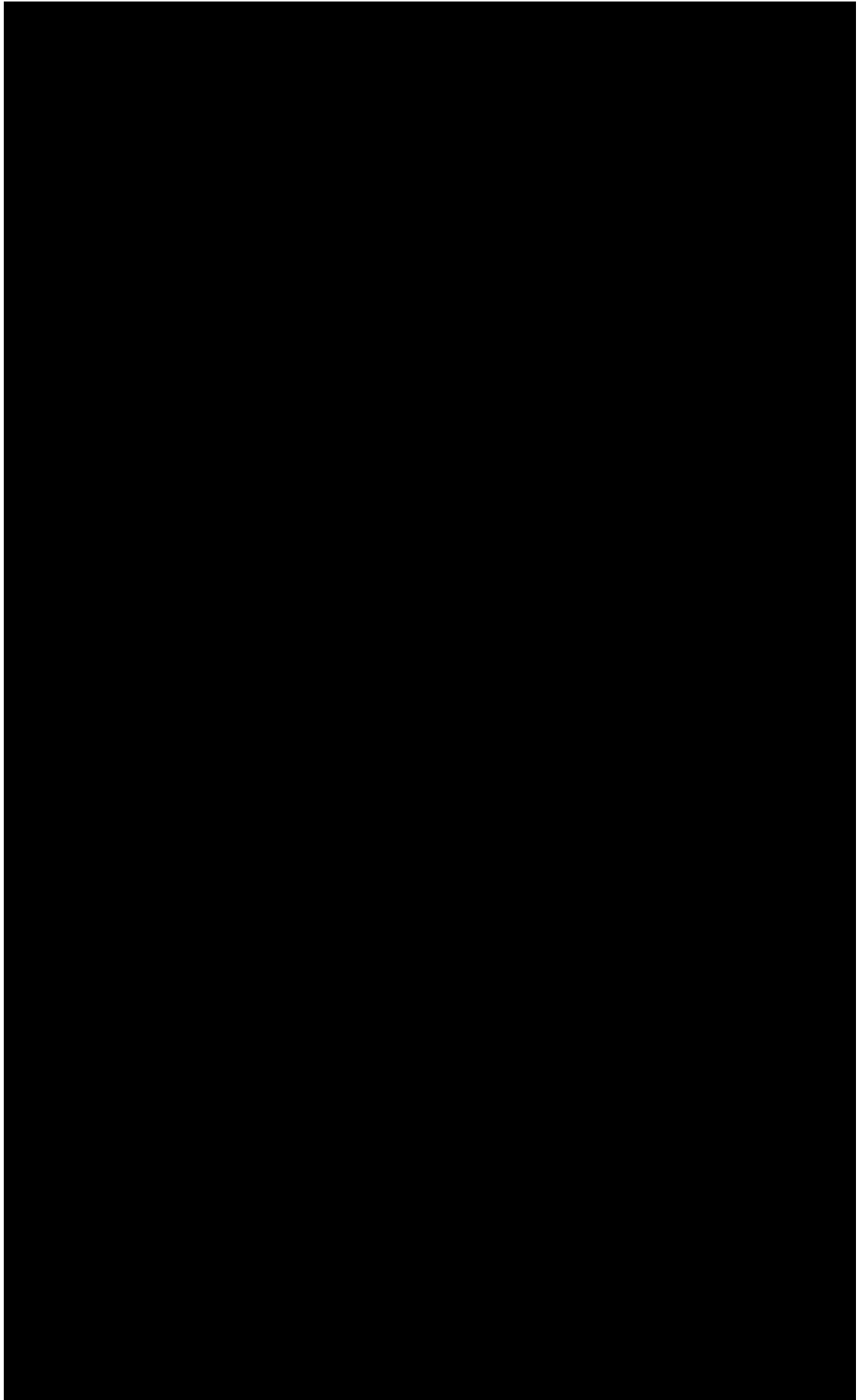
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



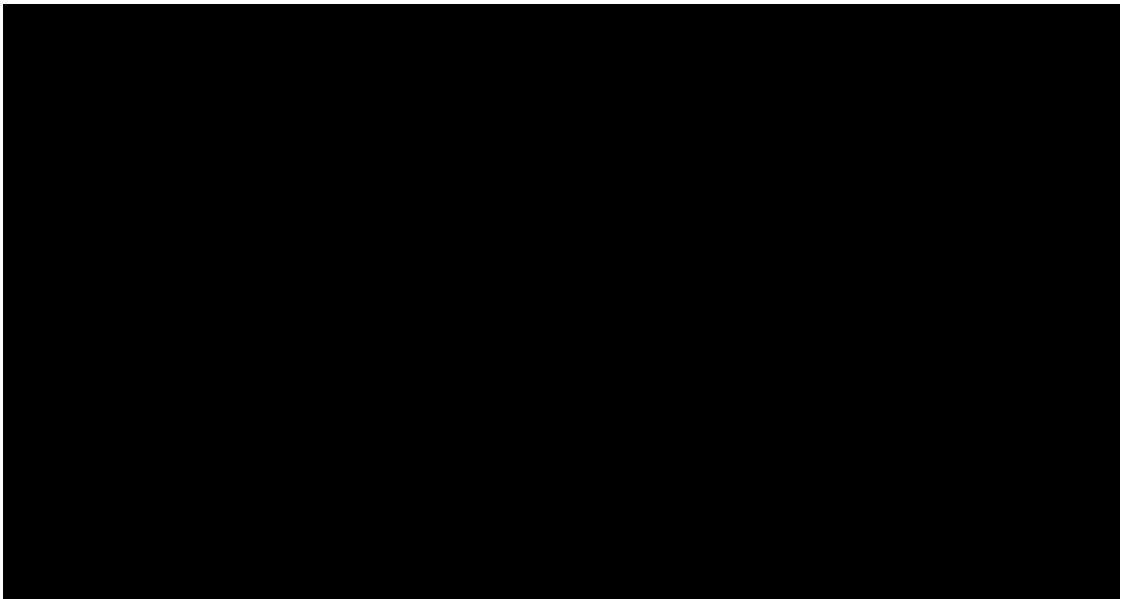
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8



9 Q Okay. And you have copies of all the
10 IRRs that you can show us from 2010 where you can
11 give it to us so we can see which one of these you
12 flagged and sent out to VIPER analysts, correct?

13 A I do not.

14 Q Okay. Because you -- you, along with
15 other people in CVS, destroyed those documents,
16 correct?

17 MR. BUSH: Objection.

18 THE WITNESS: We have a set timeline to
19 hold documents. We only have so much space. Once
20 those three years are done, we start old out,
21 first out.

22 BY MR. BAKER:

23 Q And you don't store them on a computer
24 database somewhere as opposed to the paper copy?

1 You don't -- you don't store them on a computer
2 database, the green -- the green bar copies?

3 A No.

4 Q Come on. Aren't -- aren't they
5 generated off of a computer?


6 MR. BUSH: Objection.

7 BY MR. BAKER:

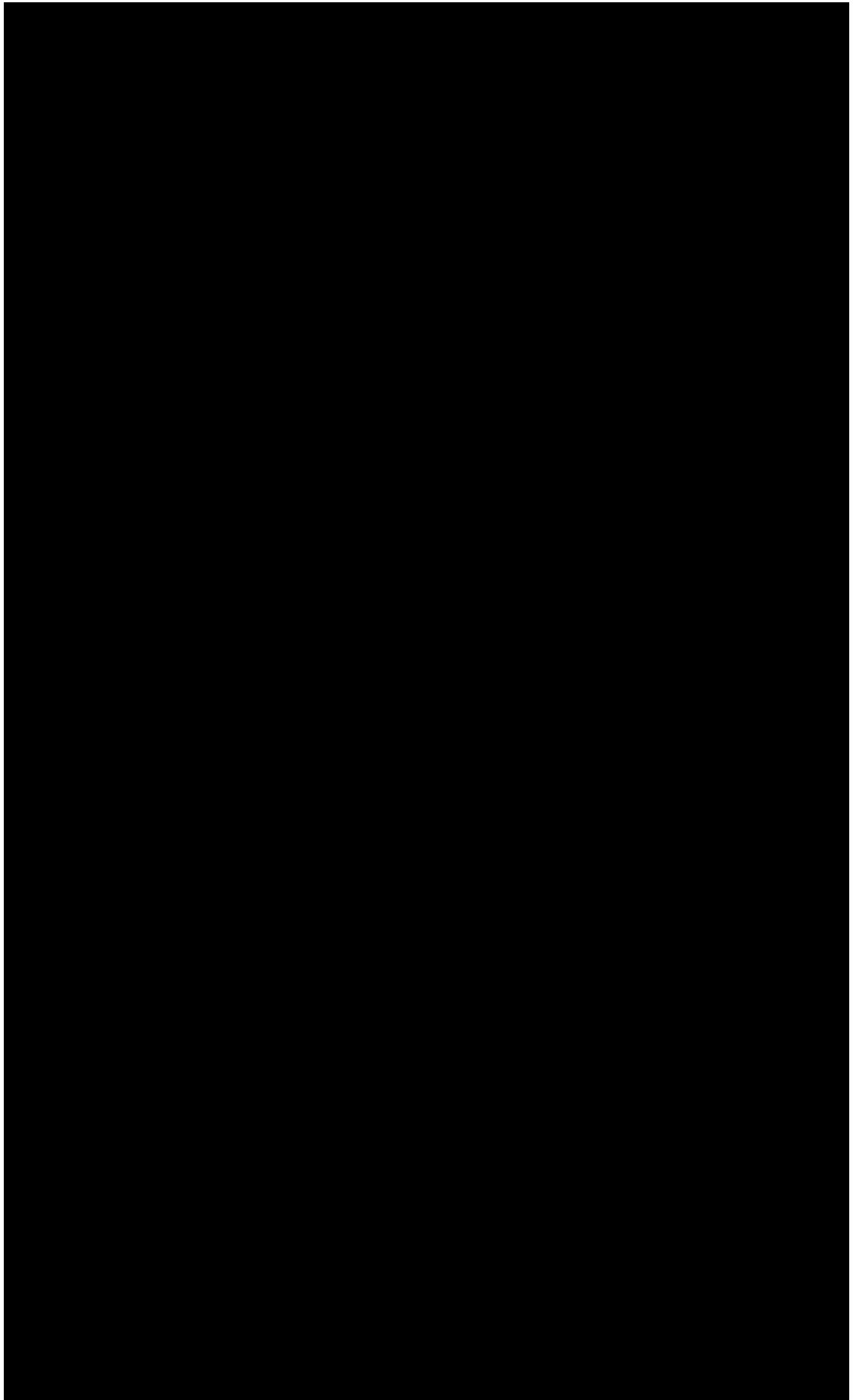
8 Q Aren't these generated off a SOM system
9 that's computer-based?

10 A Those -- those reports printed on a
11 green bar piece of paper, a stack of papers, that
12 I would receive every day. You had the electronic
13 copy. You saw what it was like in the electronic
14 copy.

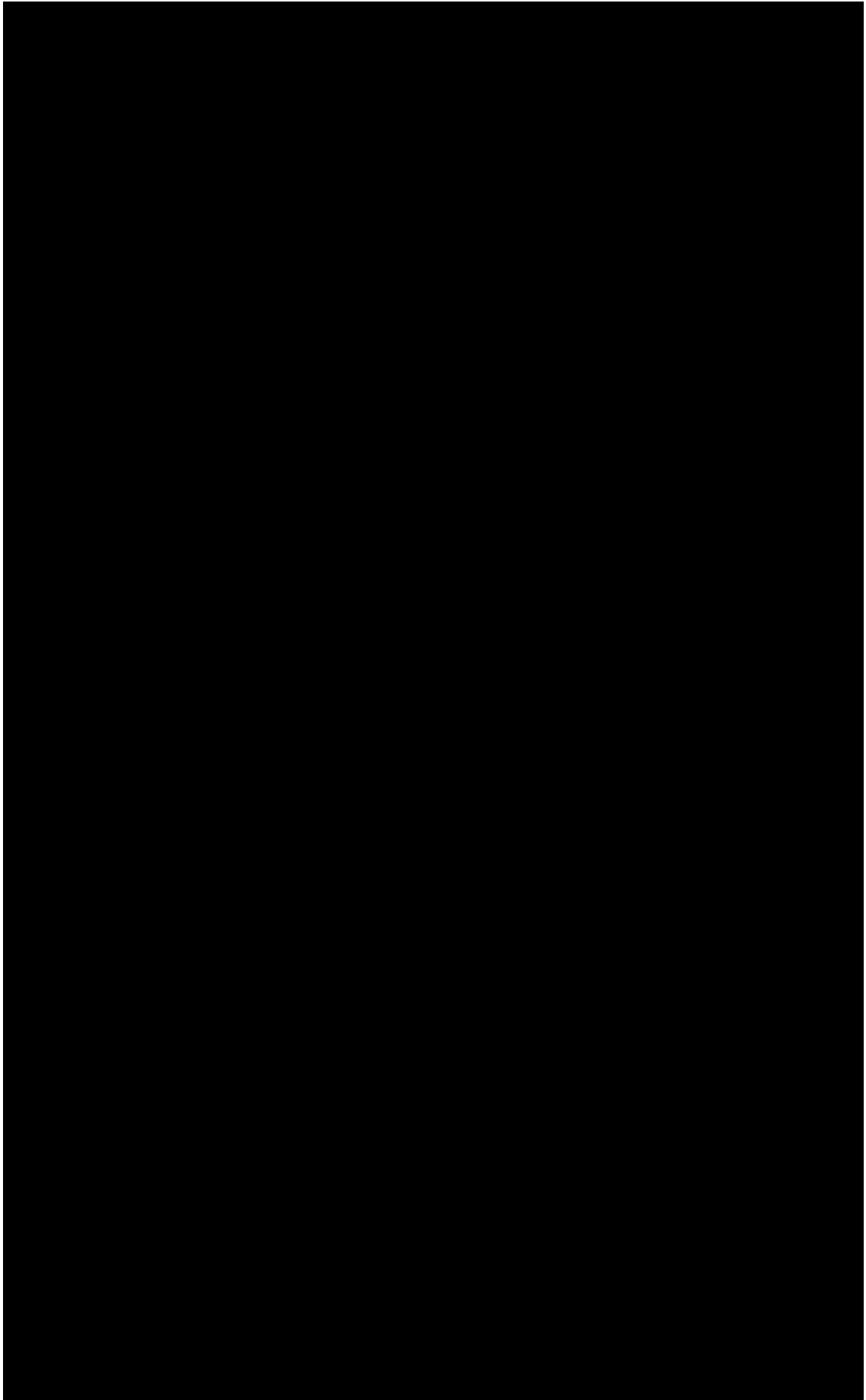
15
16
17
18
19
20
21
22
23
24



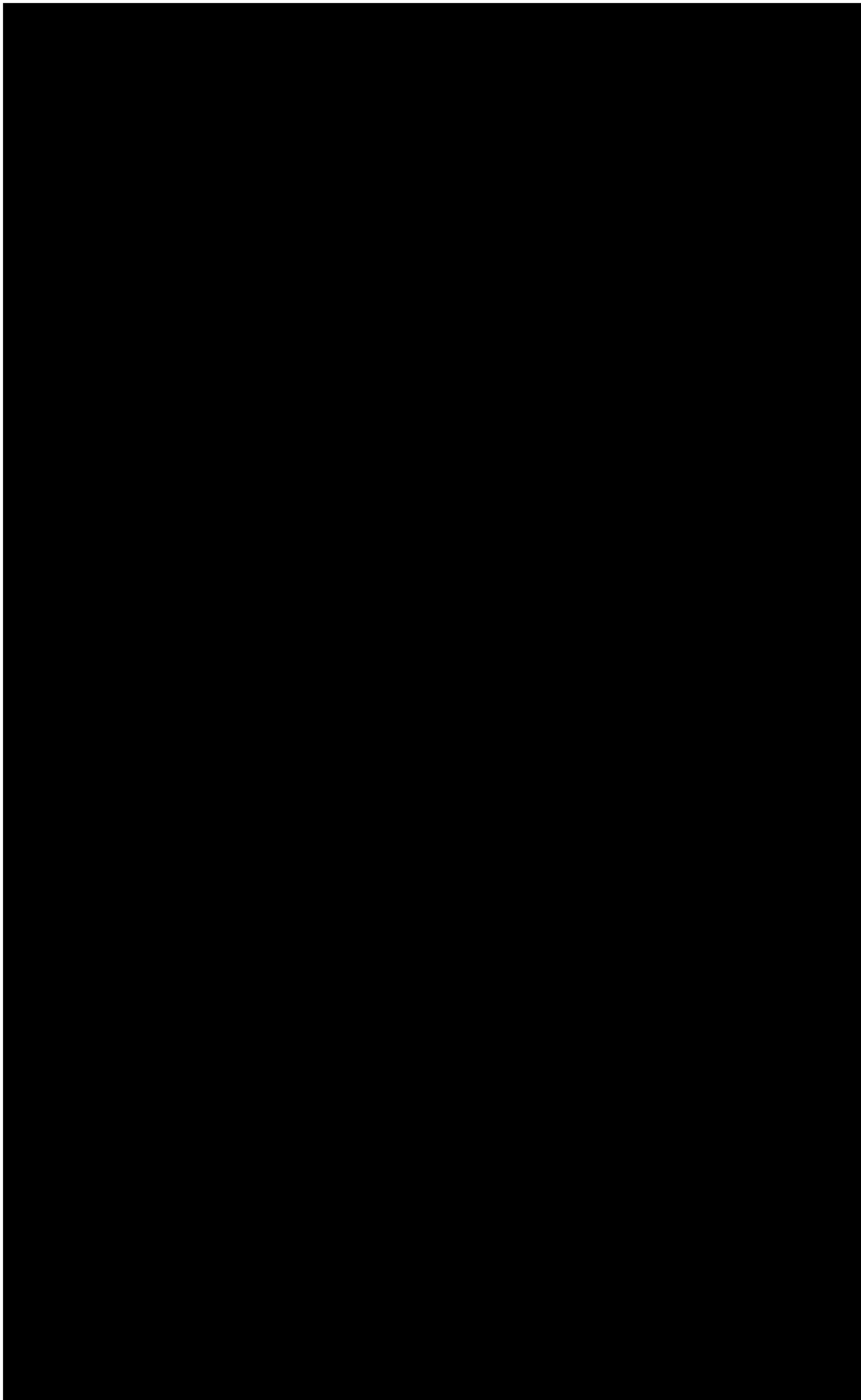
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



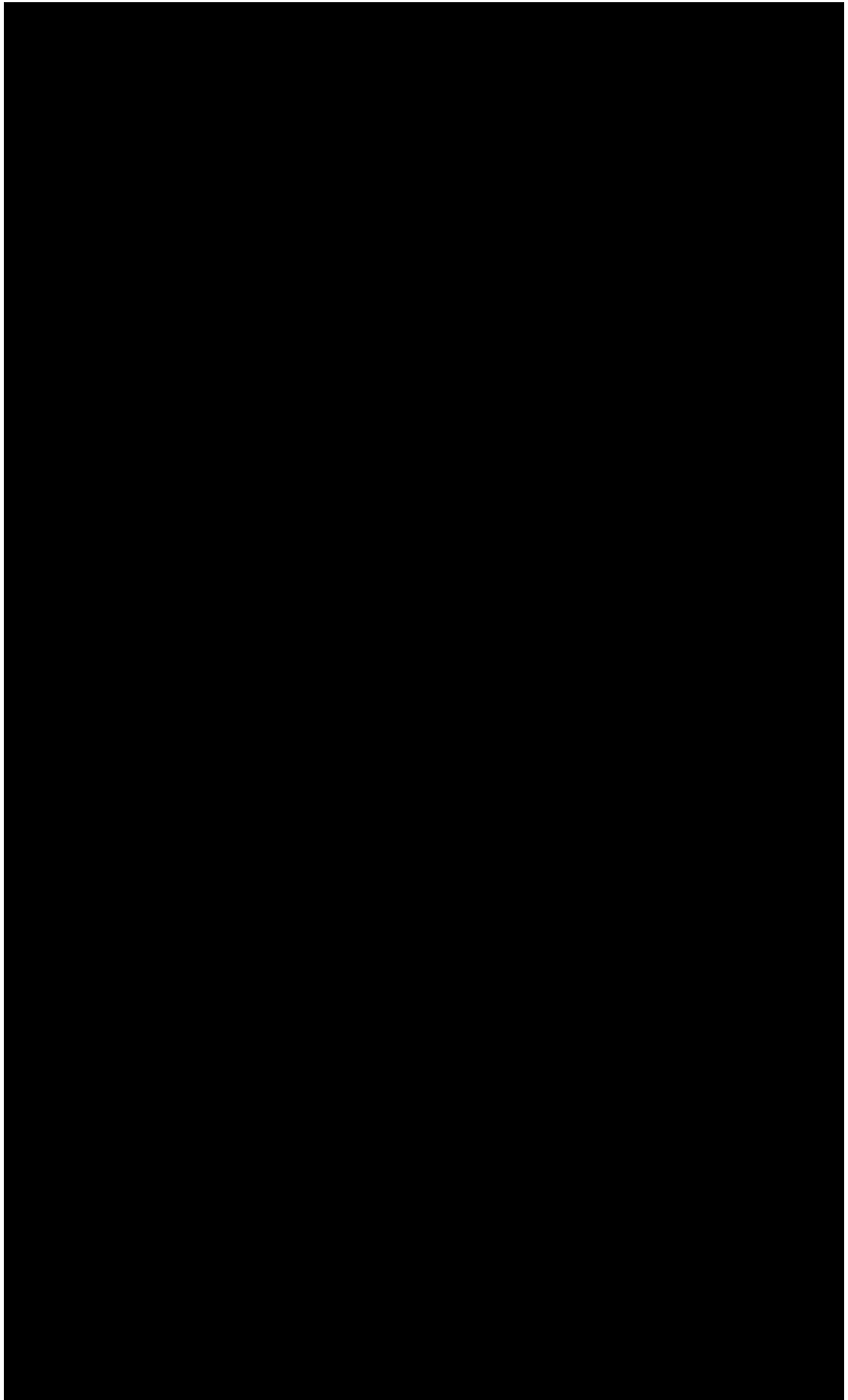
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



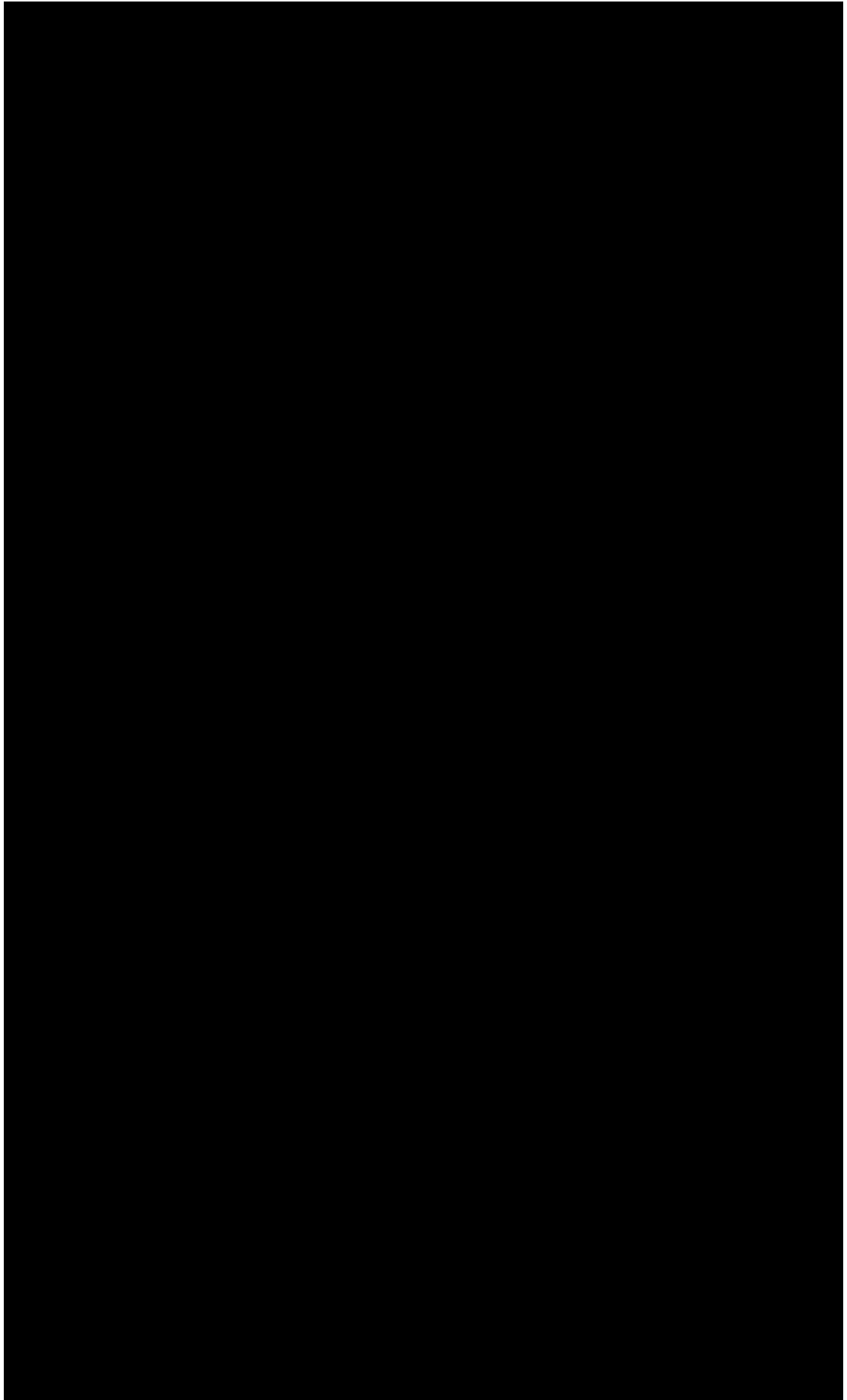
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



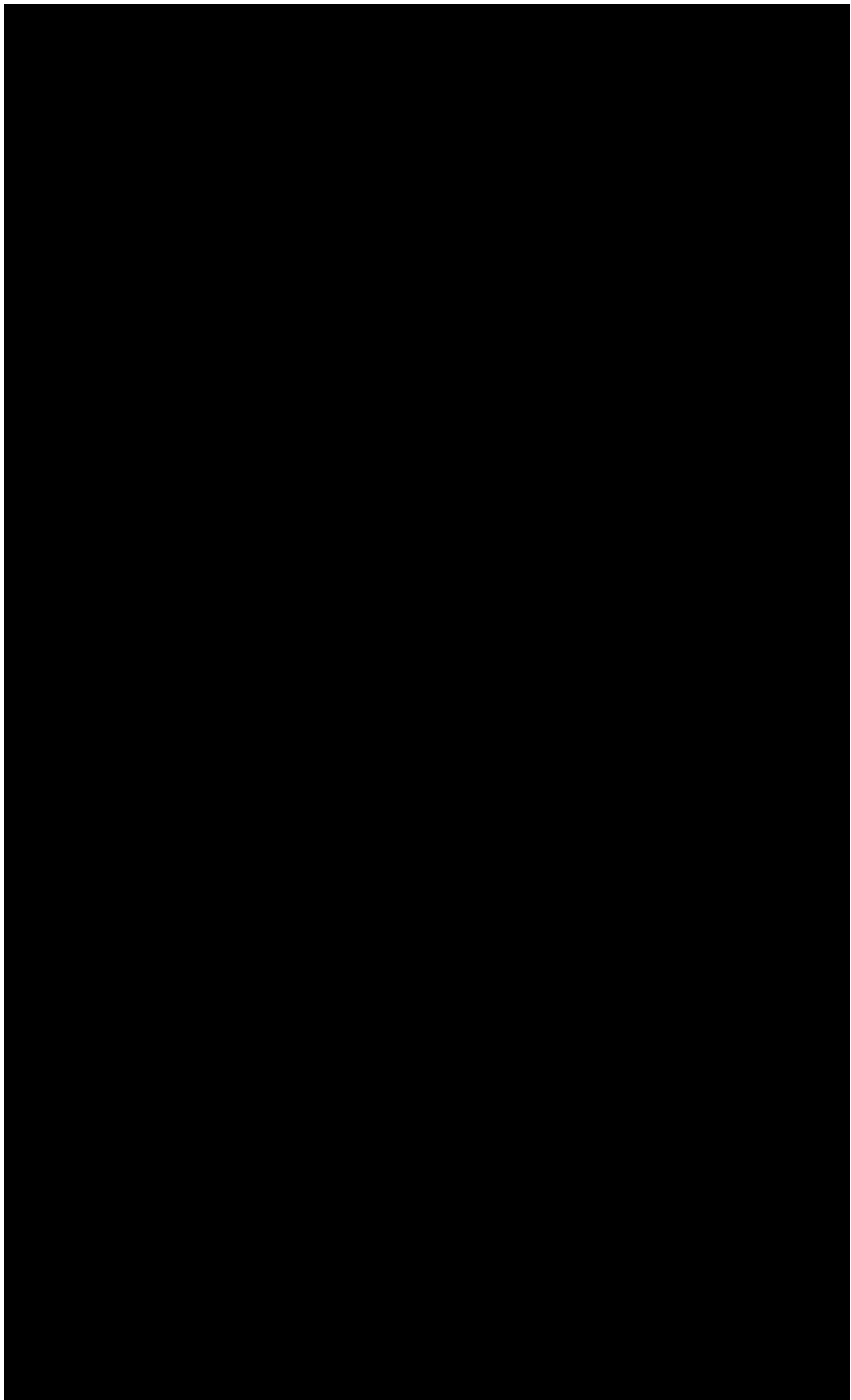
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



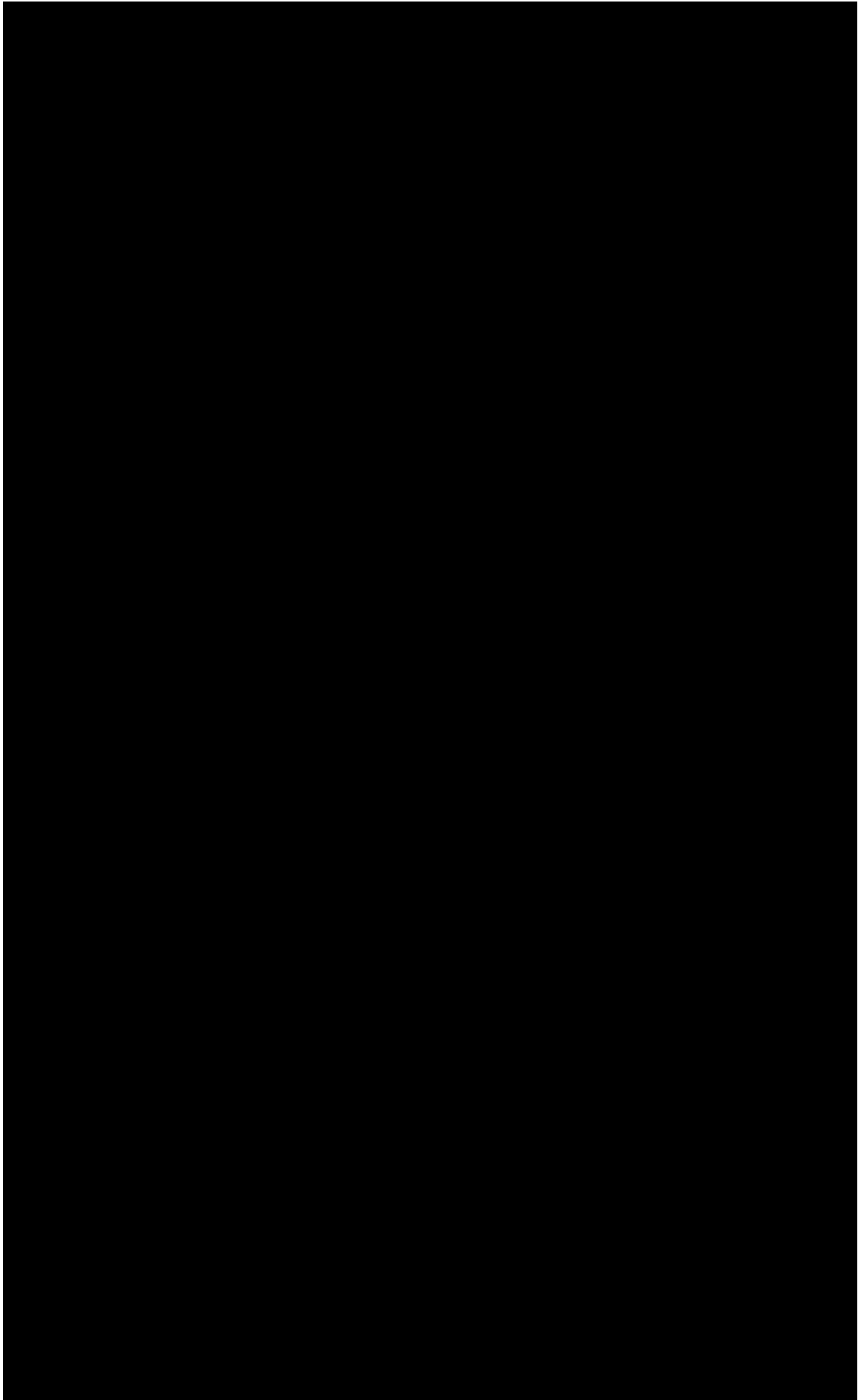
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



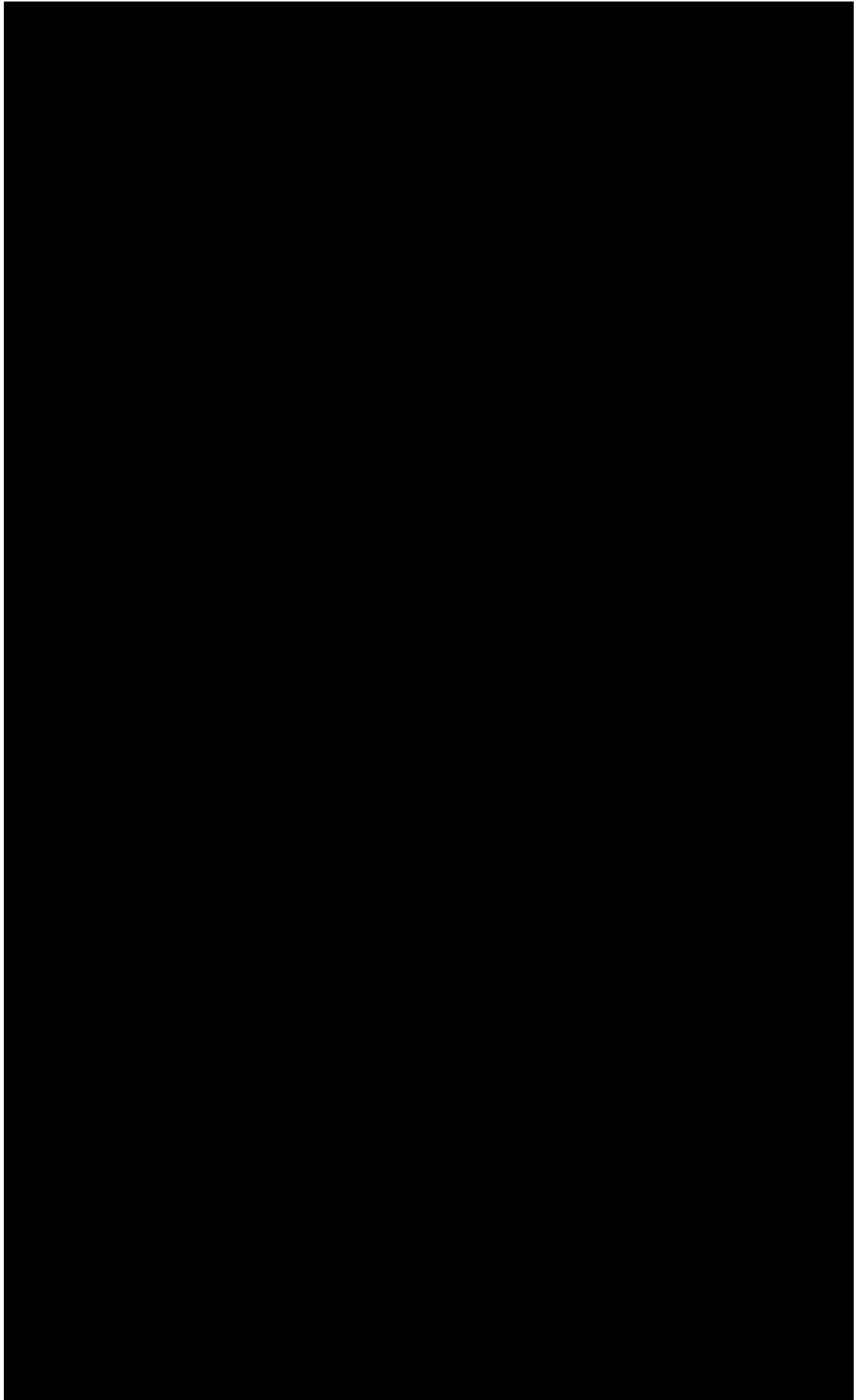
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



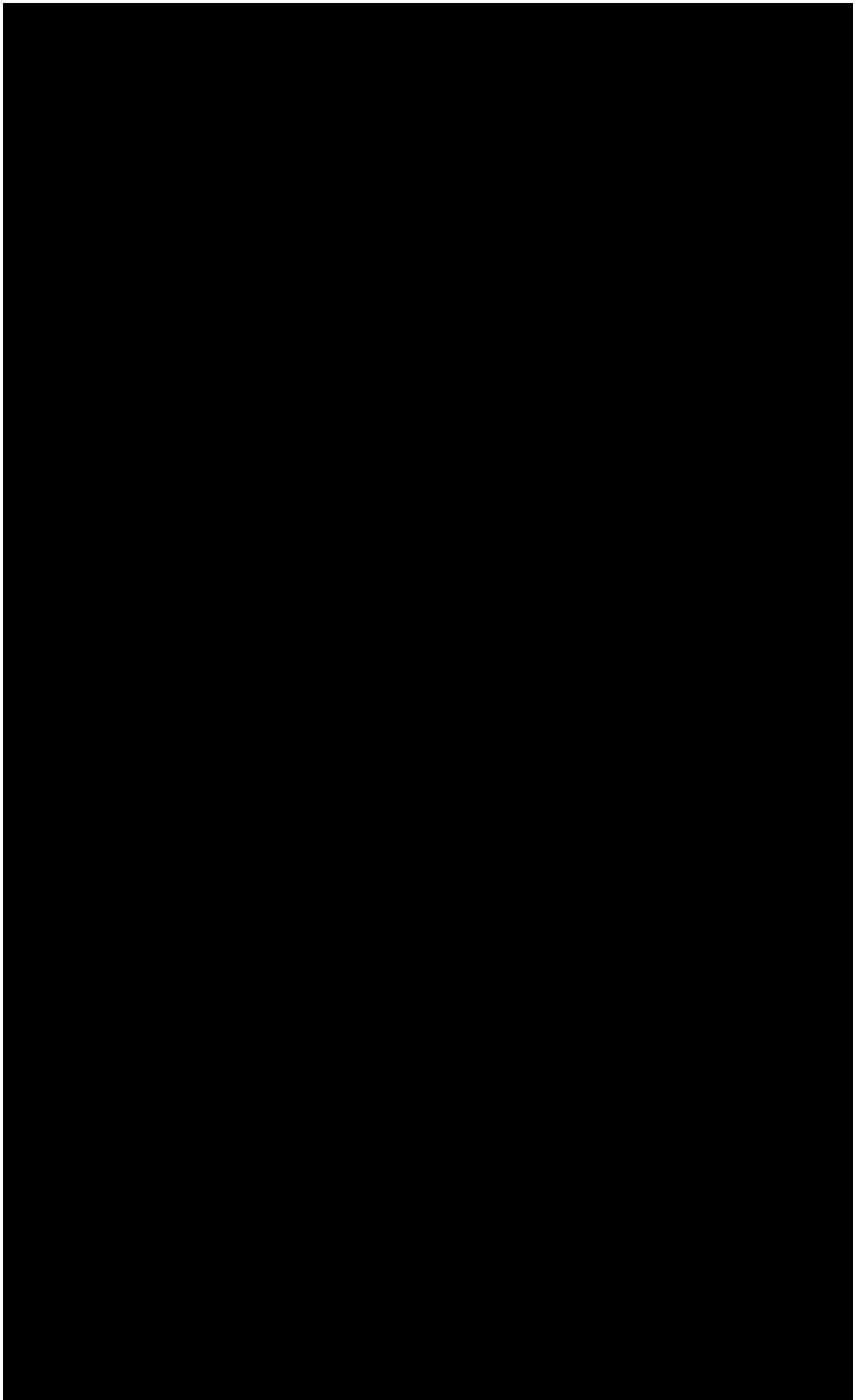
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



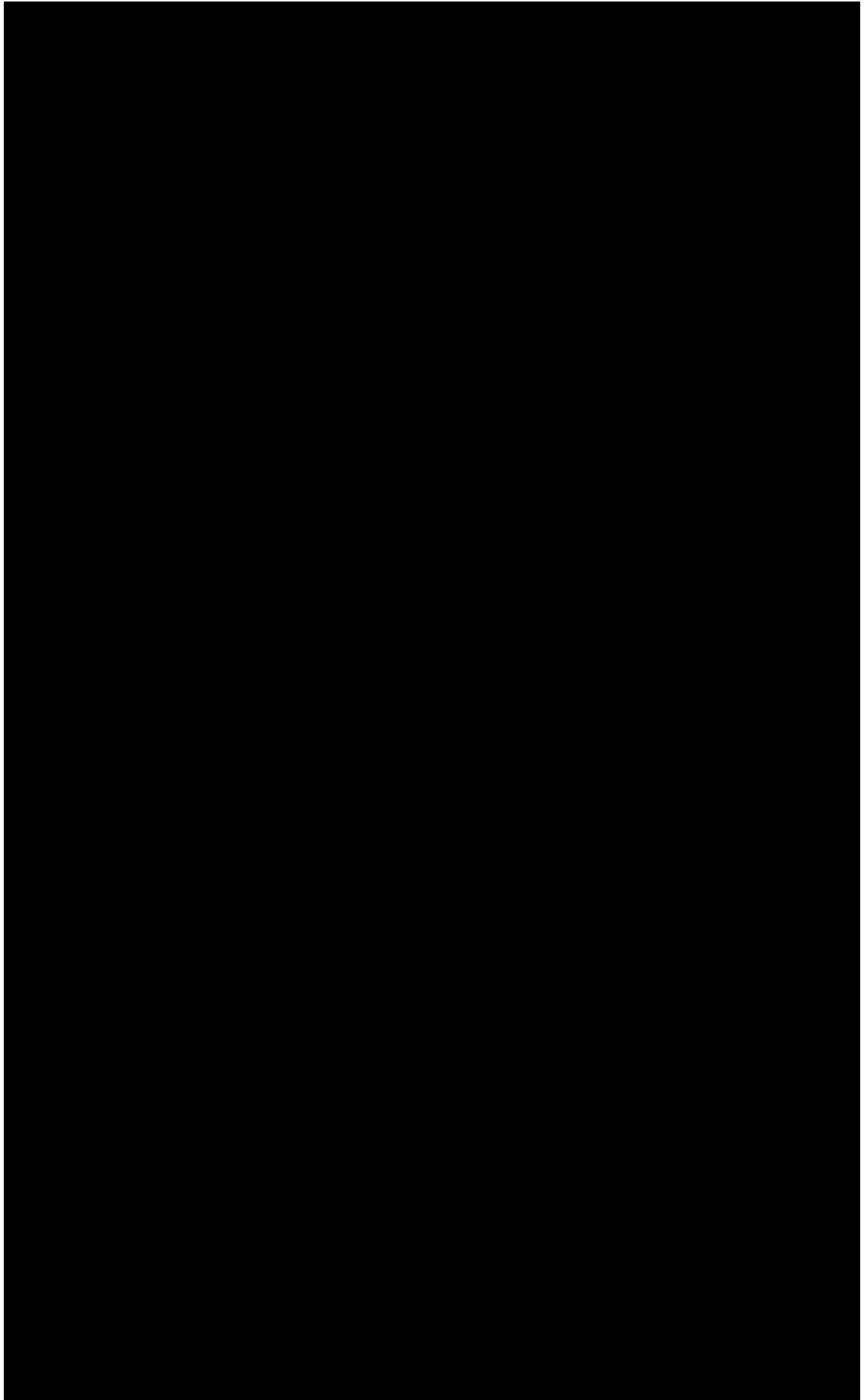
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



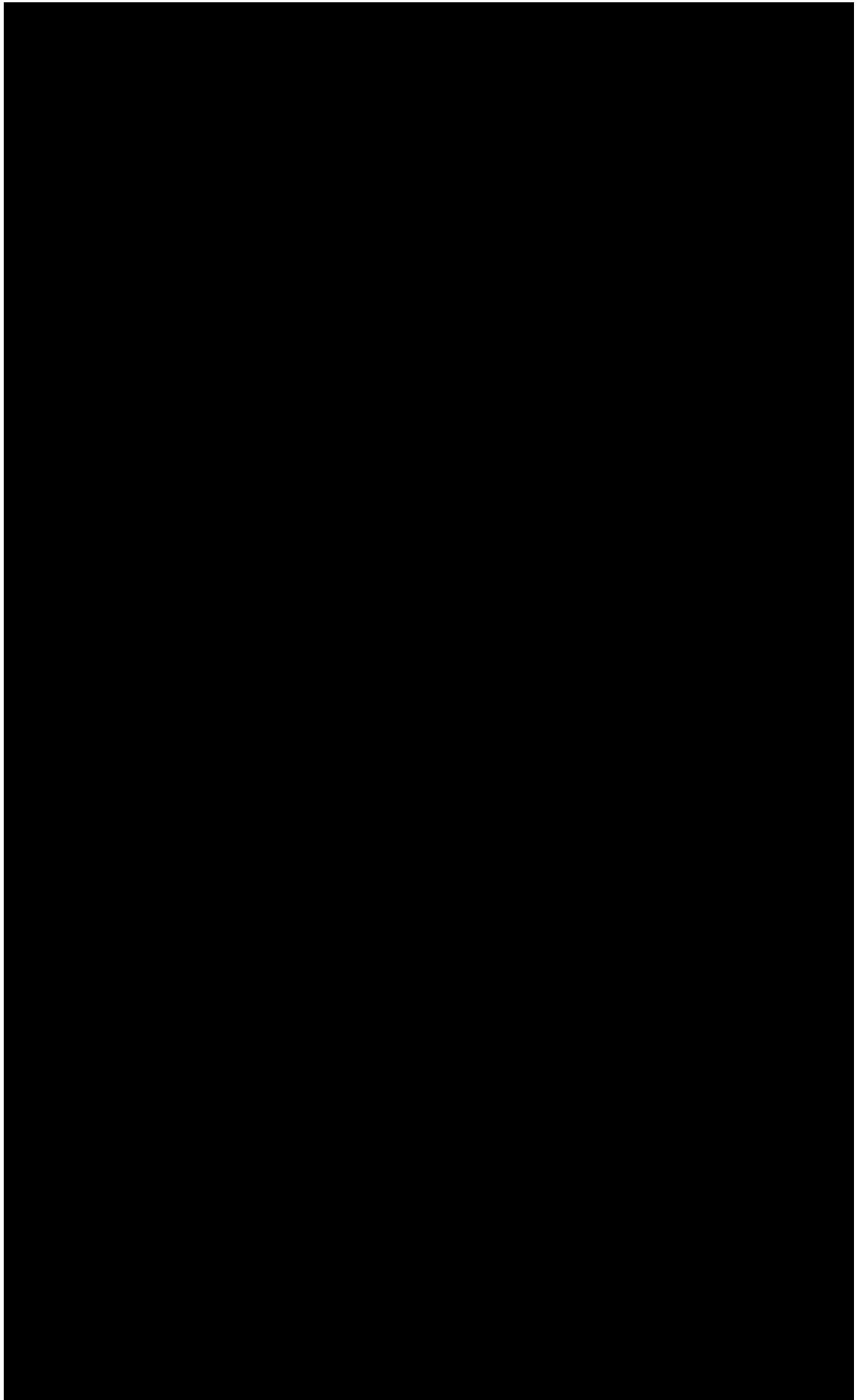
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



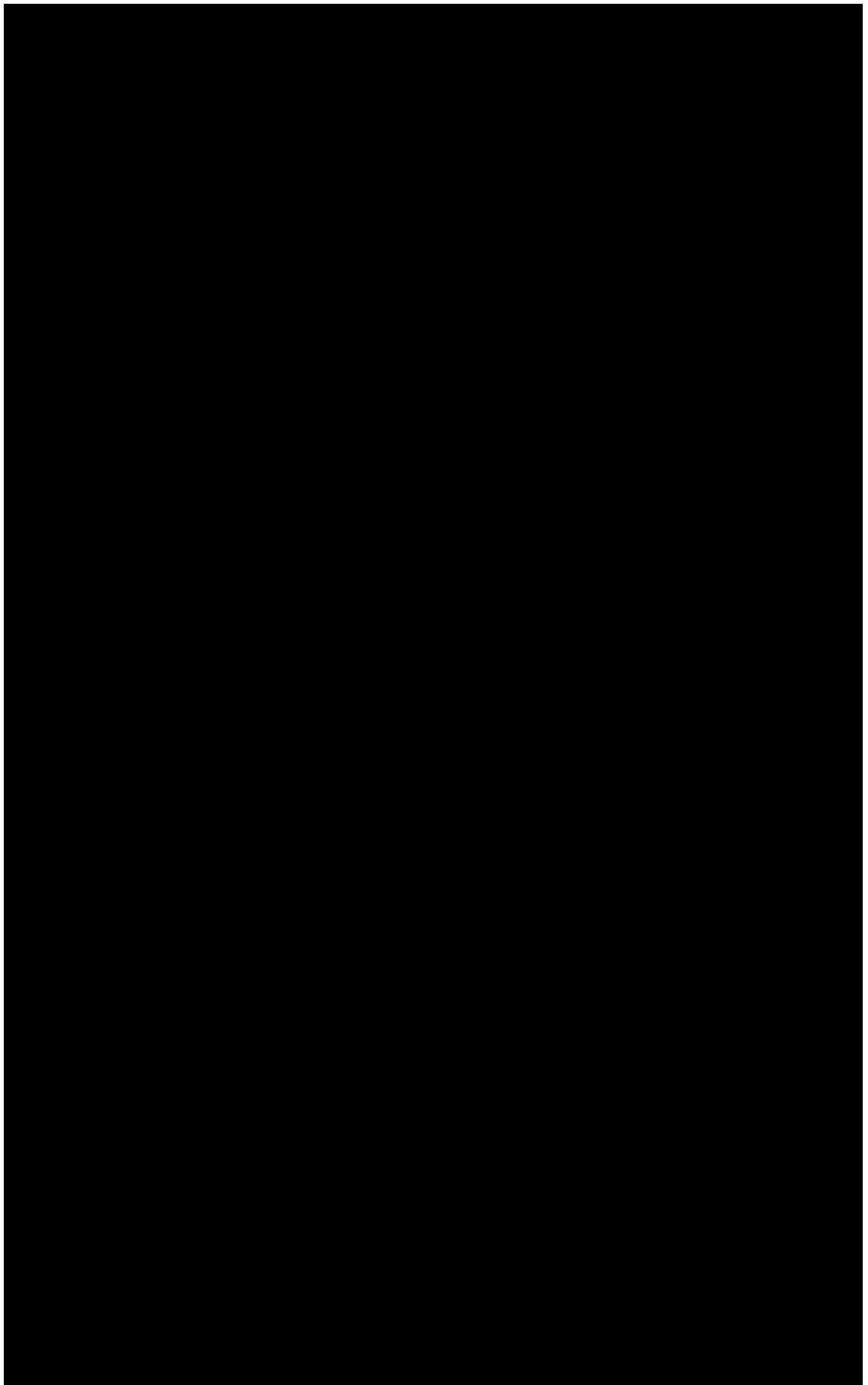
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



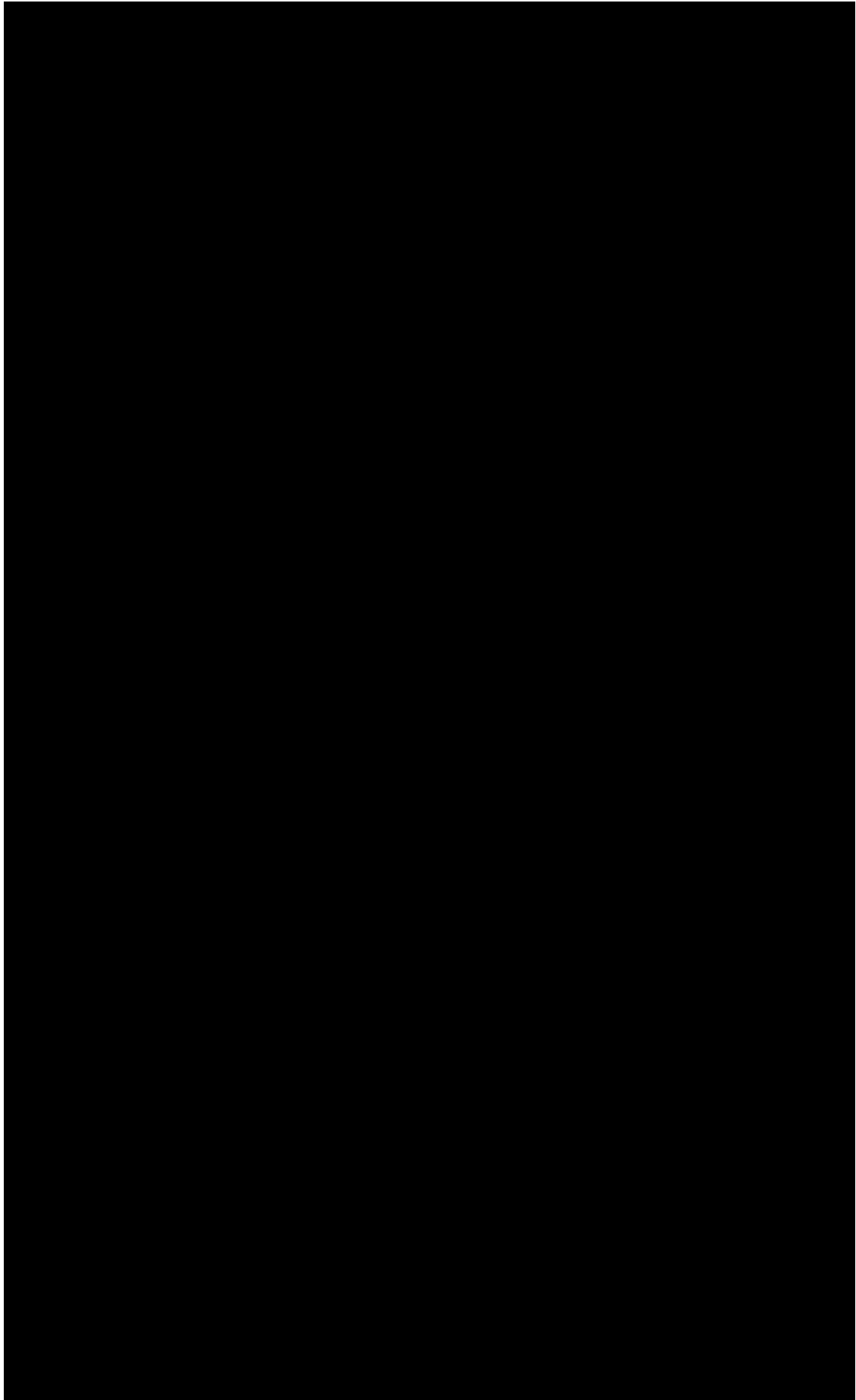
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



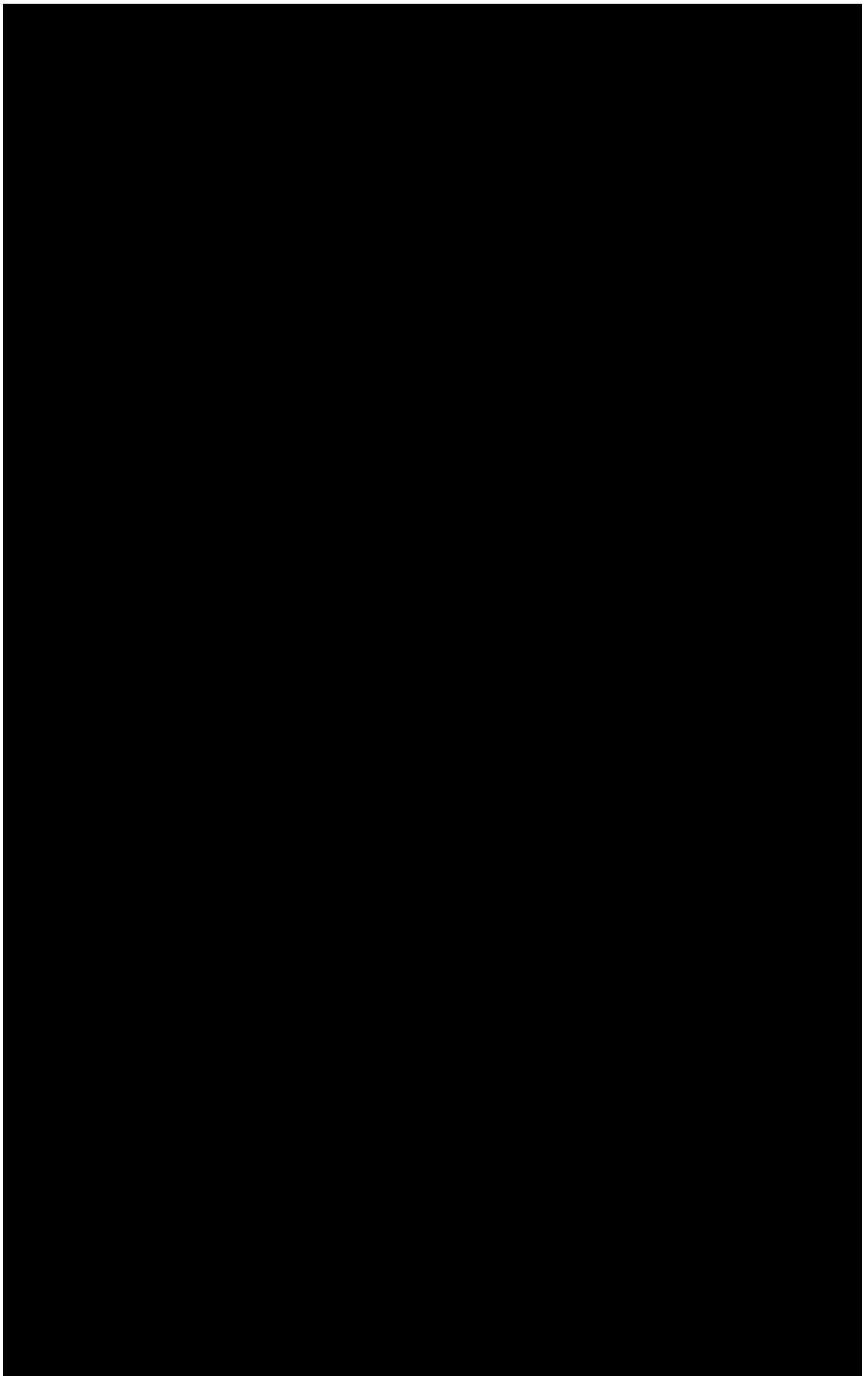
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



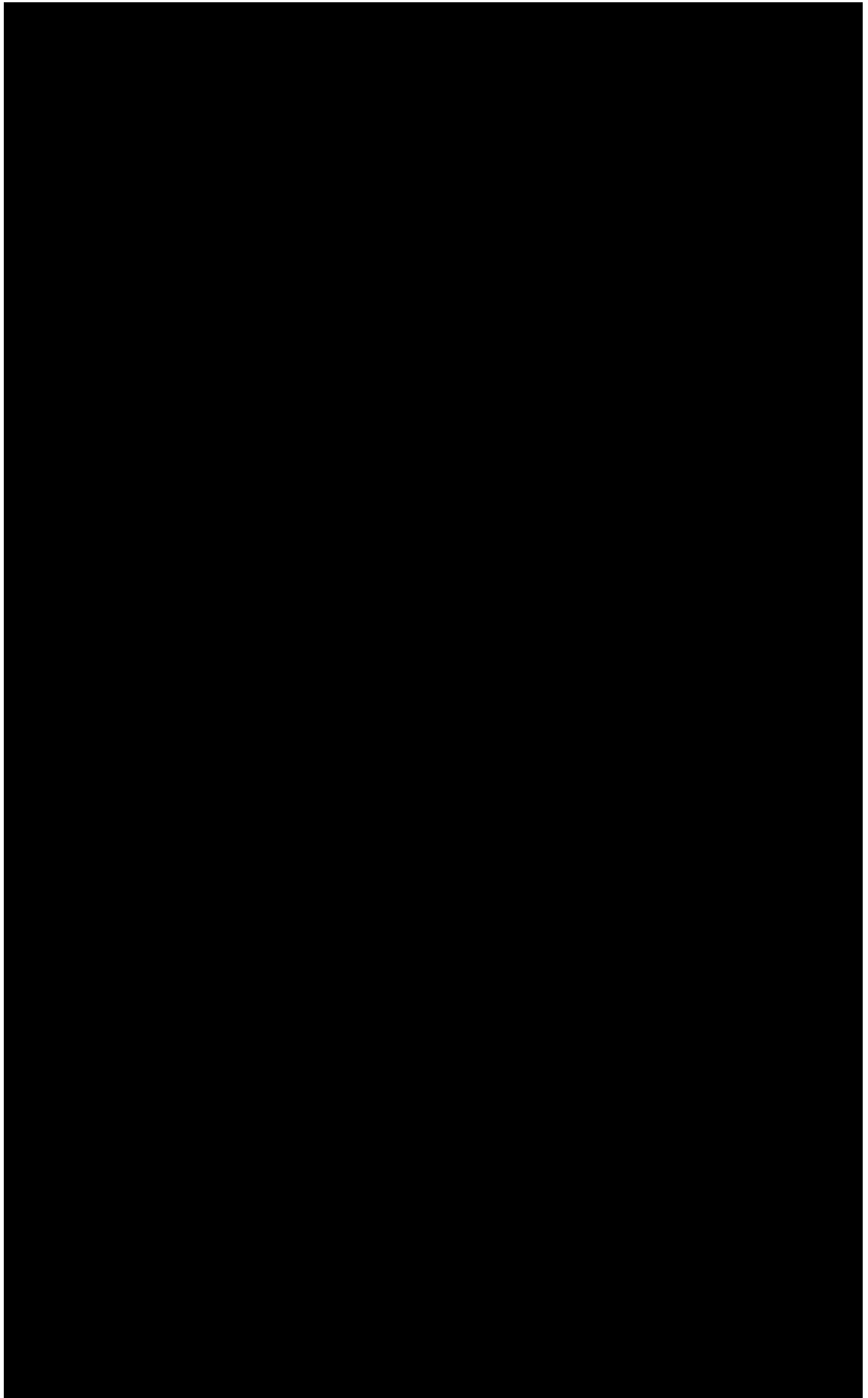
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



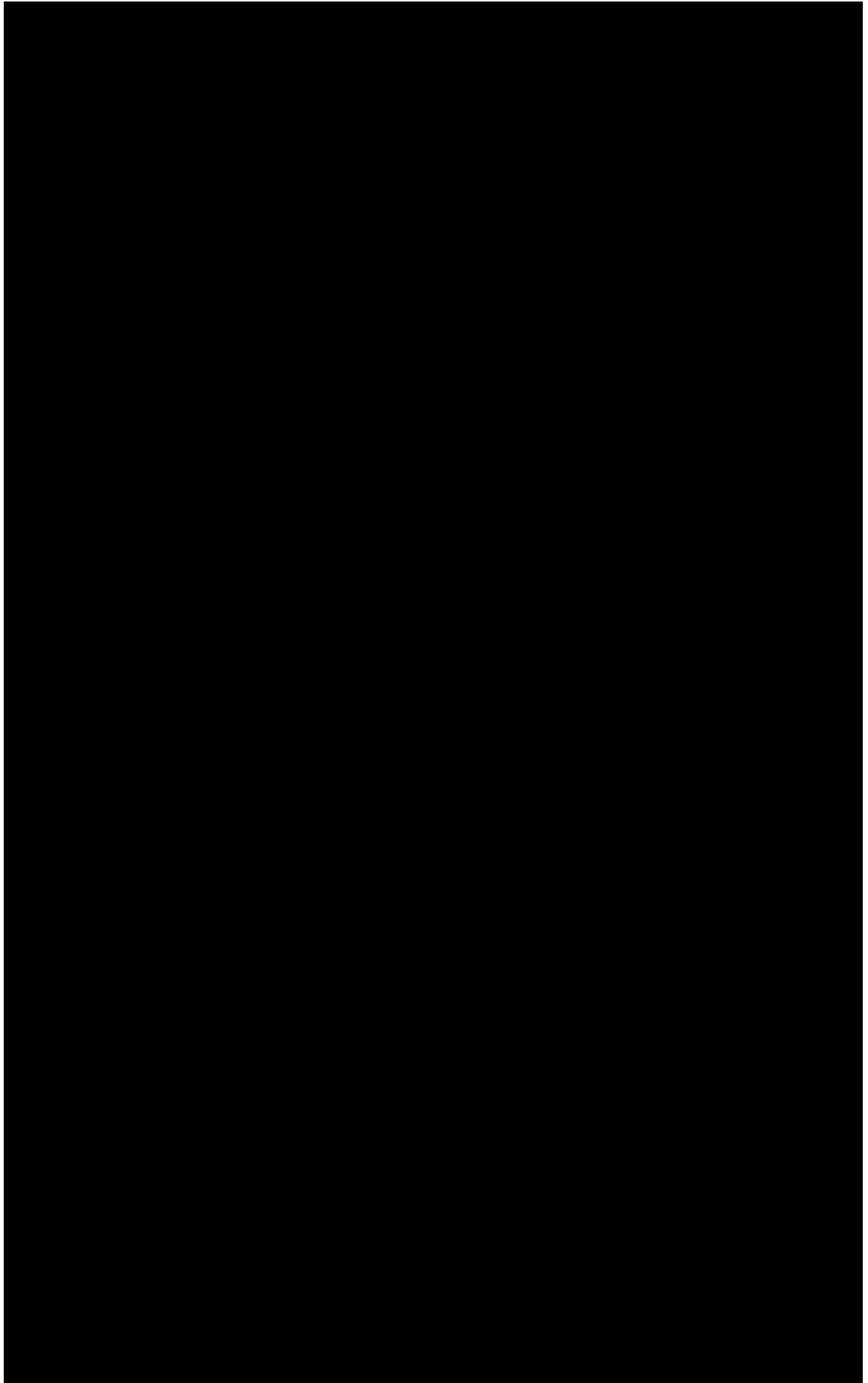
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



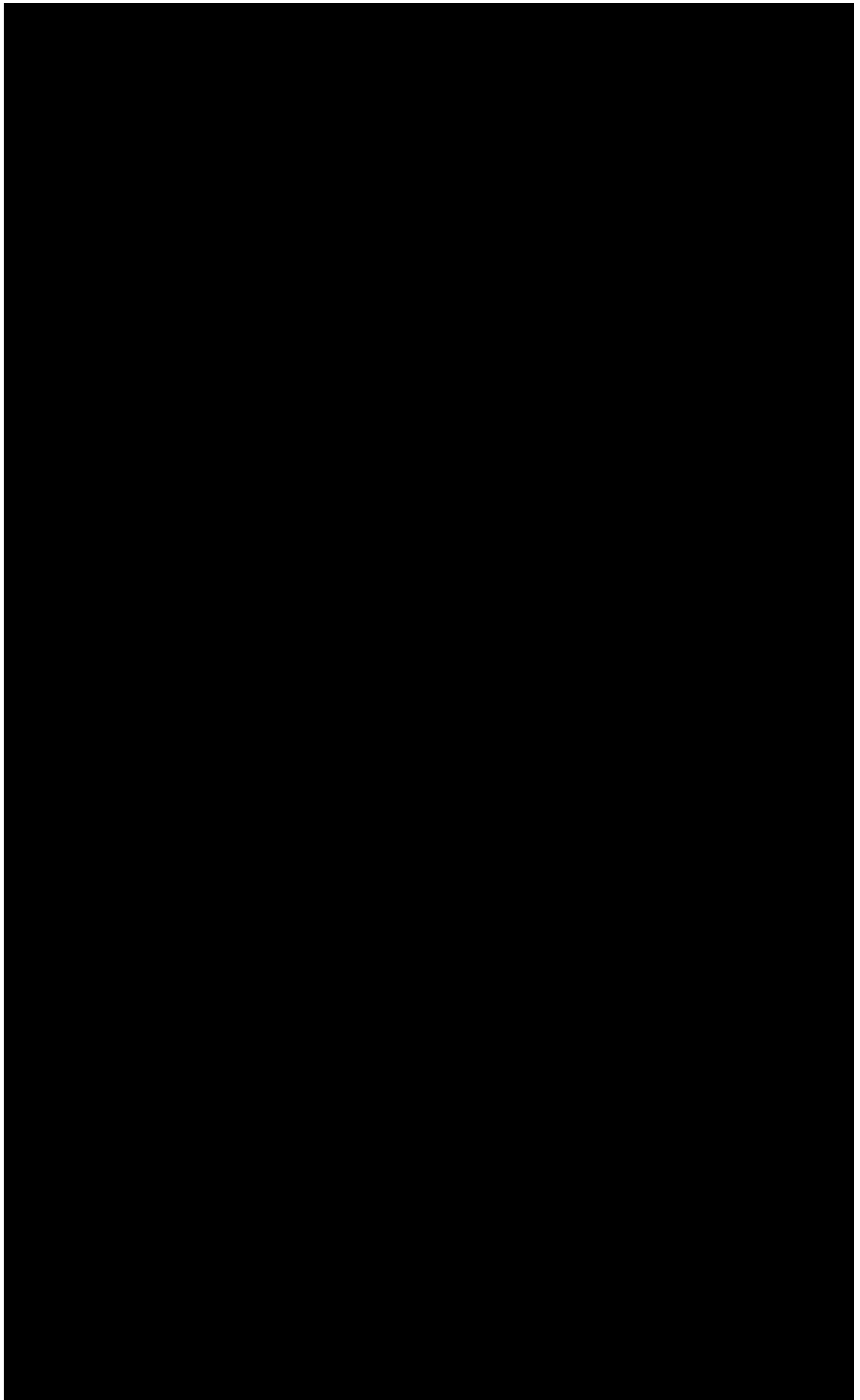
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



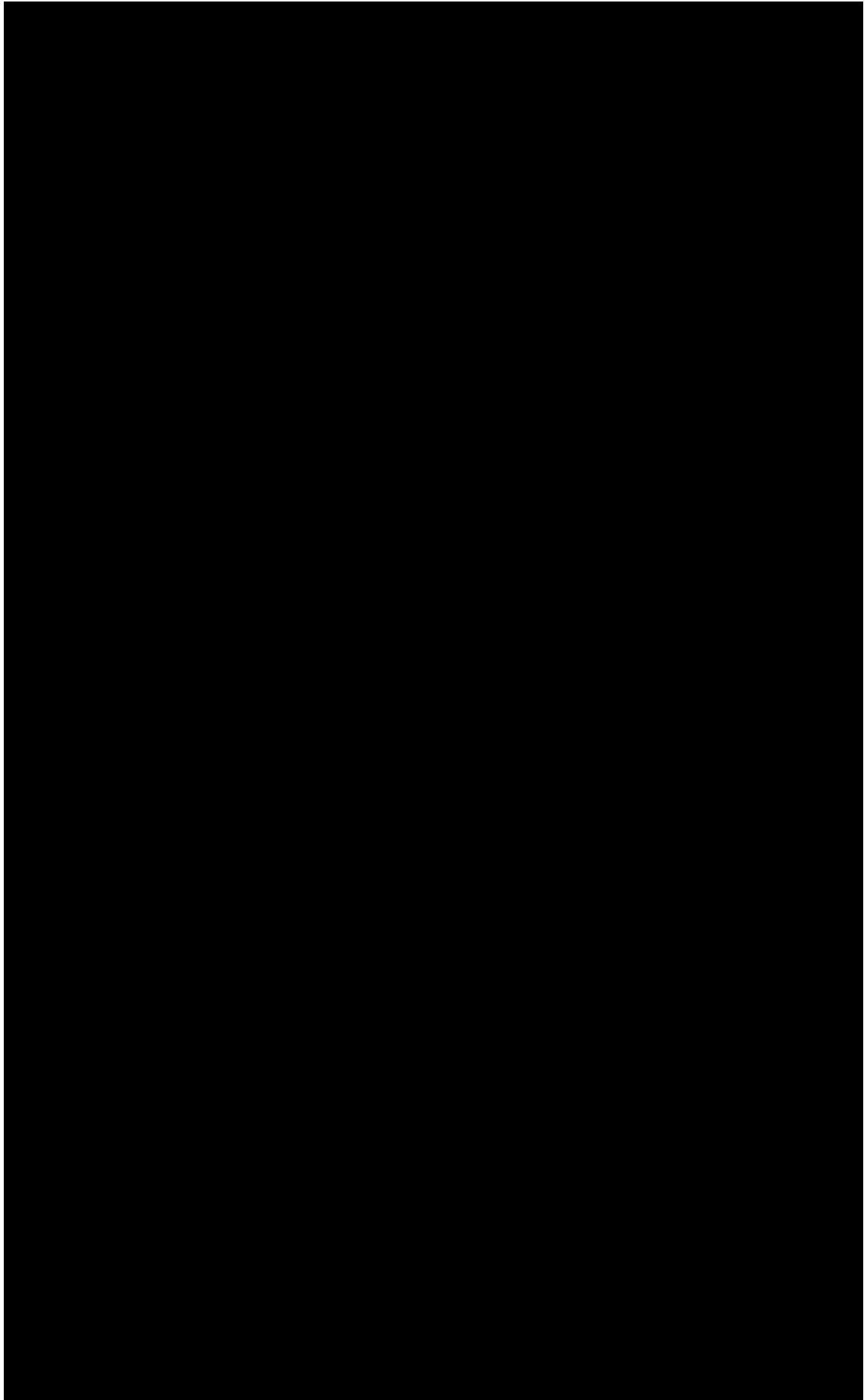
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



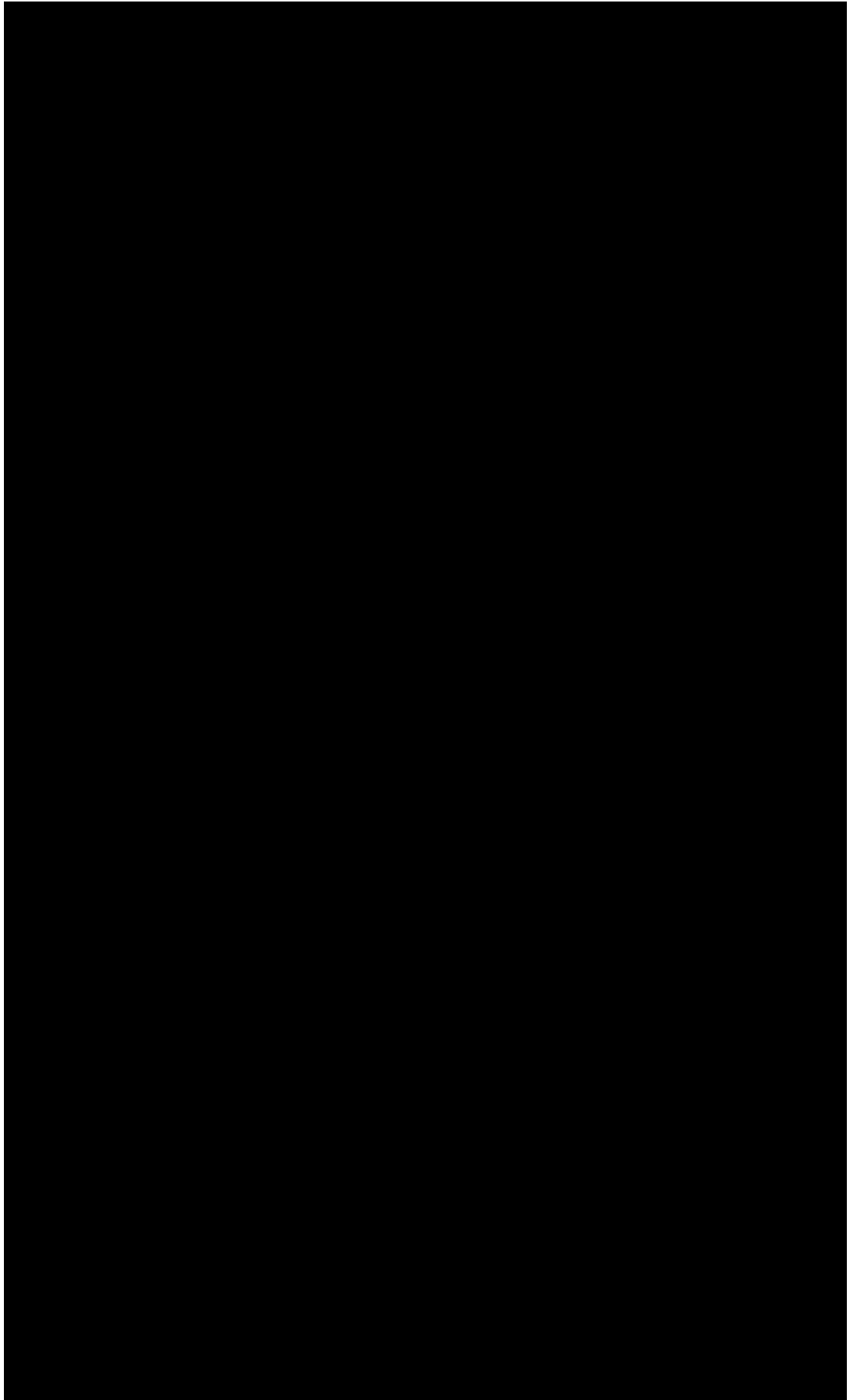
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



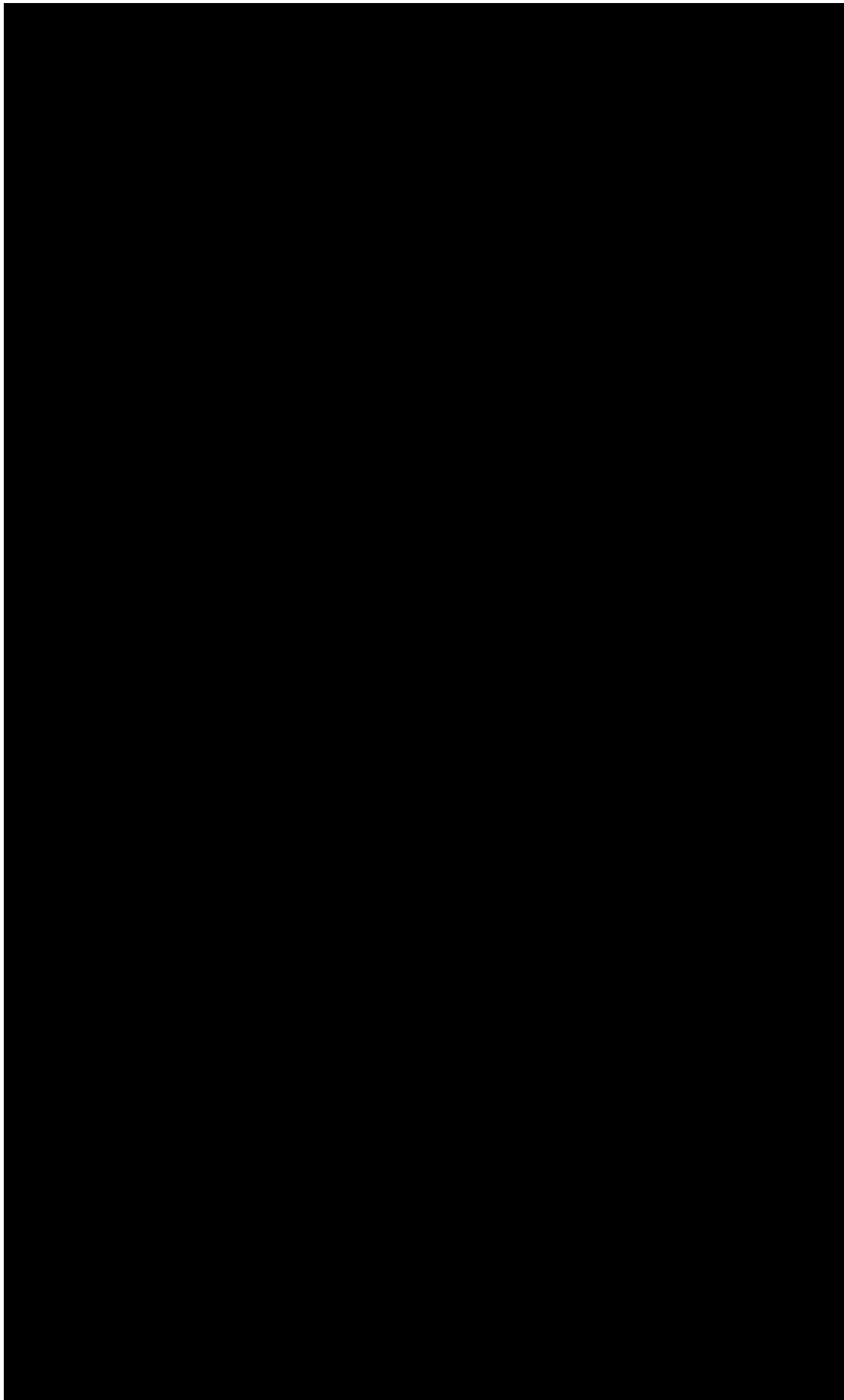
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



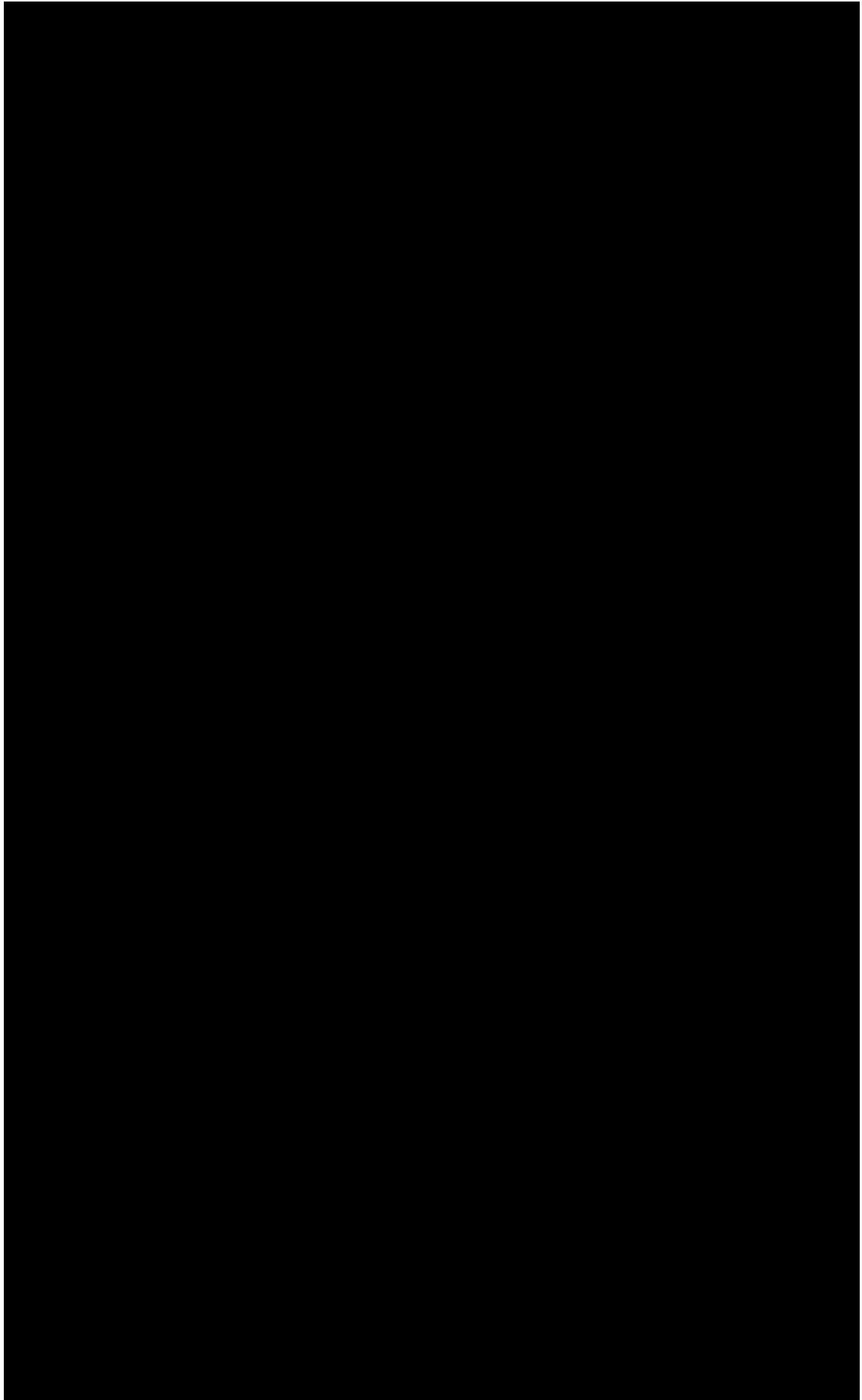
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



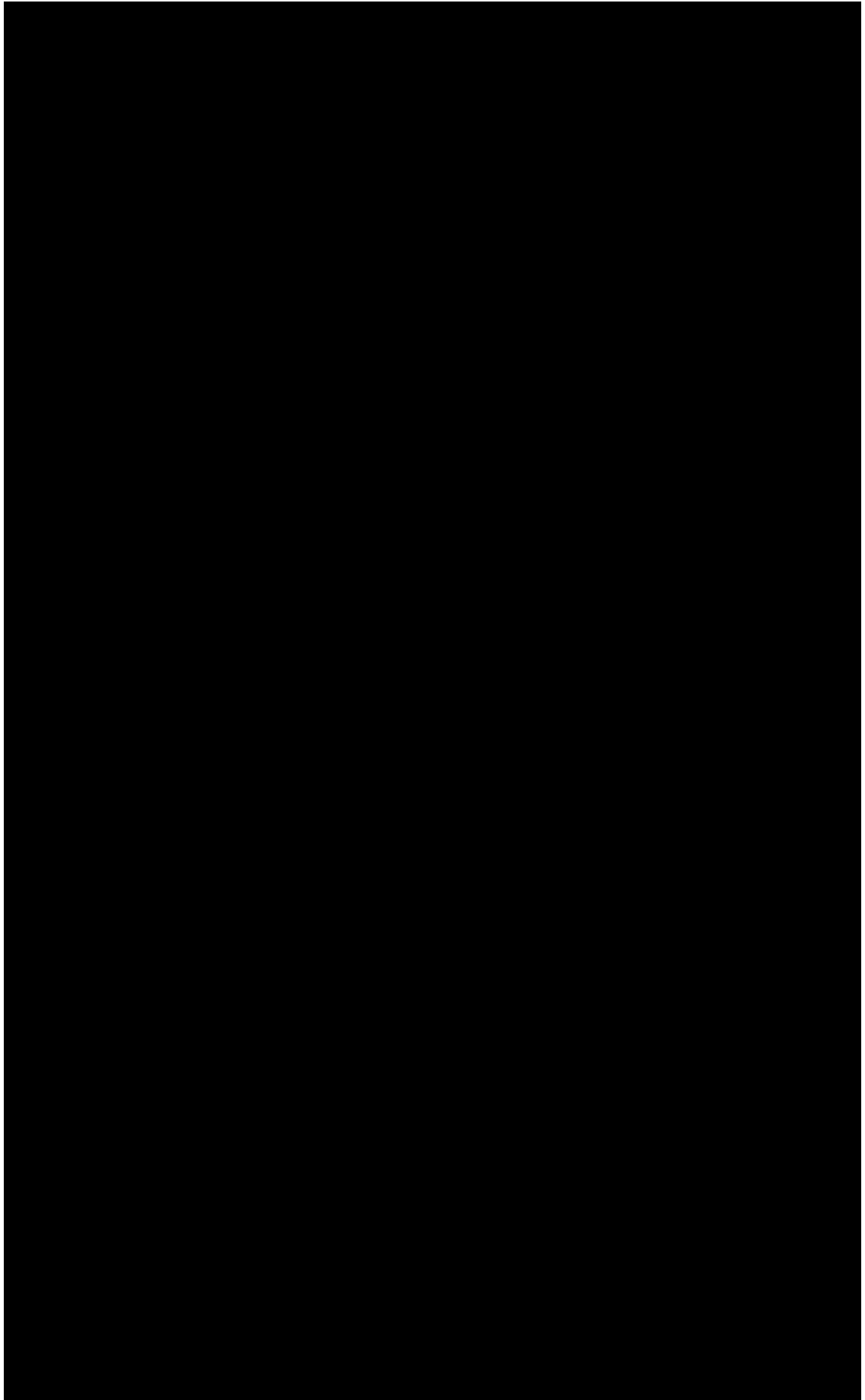
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



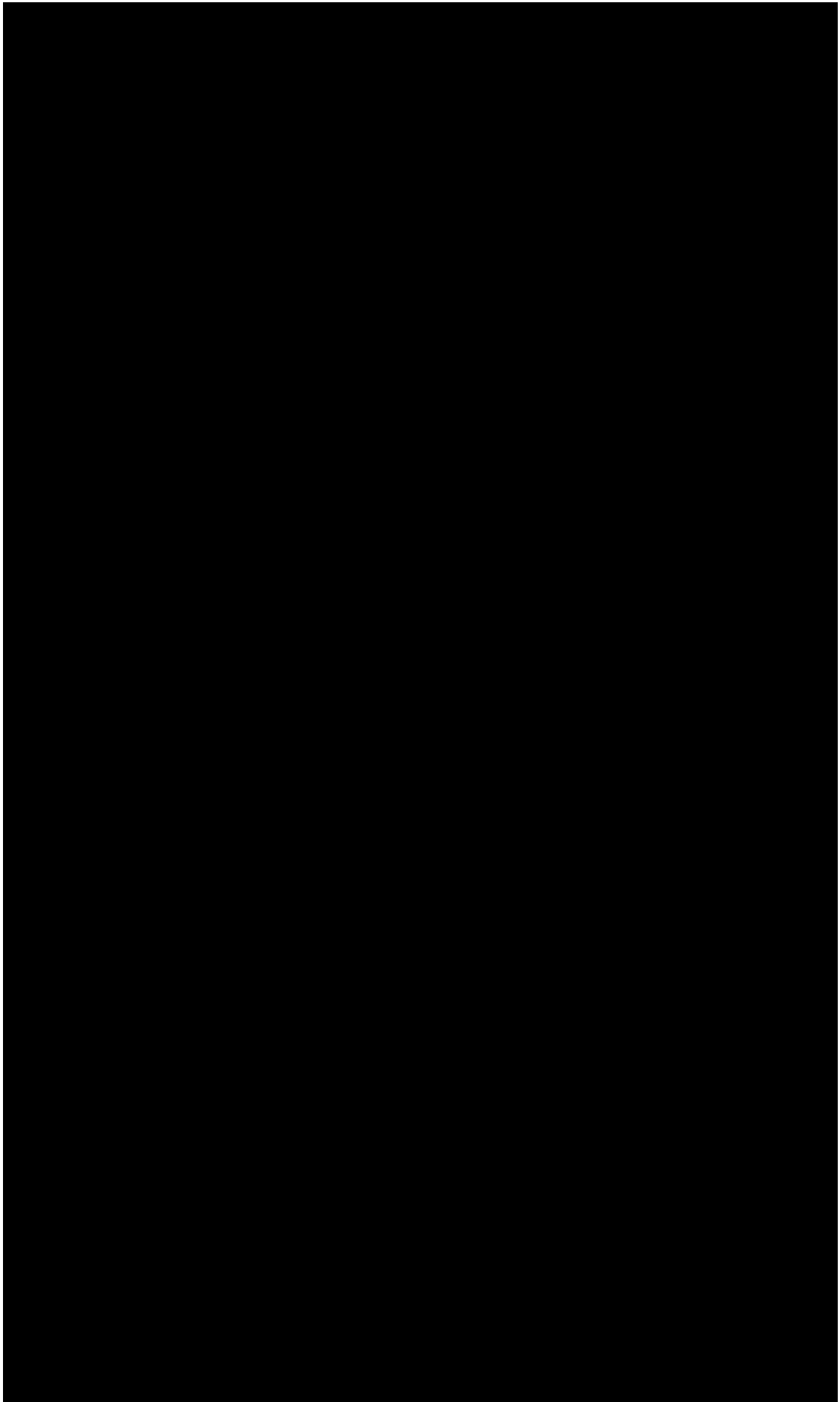
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



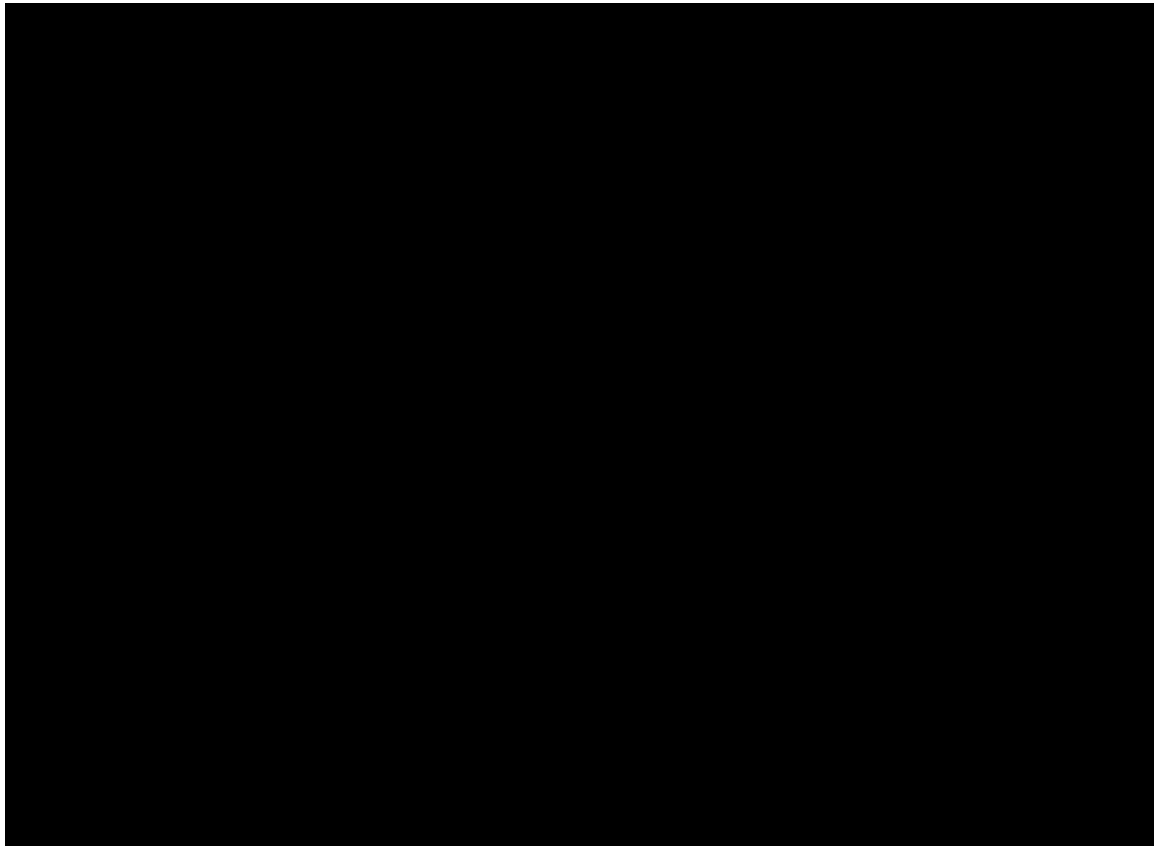
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11



12 Q And the retuned program delivered in
13 2011, the program was designed to pend an order at
14 .15, according to that document from CCS, the
15 company that wrote the algorithm-based program,
16 correct?

17 A Yes.

18 Q Okay. In spite of that, CVS still
19 raised the score from .15 to .65 to pend an order
20 from that point forward, correct?

21 A We gave them the results of what we had
22 in investigations, and it was agreed upon, even
23 with this company, that it was acceptable to start
24 raising it.

1 Q Sir, I showed you documents where y'all
2 went back and forth in 2010 about that, correct?

3 A It doesn't mean we didn't have
4 conference calls.

5 Q Okay. You don't --

6 A I --

7 Q Can you point to one document in 2011
8 after the time that the program -- the retuned
9 program was delivered that says you had
10 conferences and did some testing with CCS to raise
11 the program to .65? Do you have any documents to
12 that effect?

13 MR. BUSH: Objection.

14 THE WITNESS: So you're saying these
15 four documents that you presented today was the
16 only thing that went into retuning this?
17 That's -- that's what you're referring to? That's
18 what you're trying to say?

19 BY MR. BAKER:

20 Q Listen to my question.

21 A I heard what you said. I'm repeating it
22 to make sure I understood that you're saying --

23 Q My question is this --

24 A -- that you think these four documents

1 that you just showed me are the only documents
2 that took place for us to tweak a number,
3 quote/unquote, as important as this. You think
4 this is the only thing that happened?

5 Q Let me explain to you, I have to rely
6 upon what CVS produces to me.

7 A There's phone conversations, there's
8 conference calls. CVS is not going to allow me at
9 my level to change an IRR. I test it, I report
10 the results. They take the results. The company
11 that wrote the results, they review the results.
12 They saw the false positives. I know you don't
13 like that word. There were a ton of them.

14 Q Listen --

15 A They realized that there was an issue
16 with the original algorithm.

17 Q The original algorithm that was
18 delivered in 2008 that was --

19 A I don't know about the dates.

20 Q -- that was retuned in 2011 is what
21 you're saying.

22 A I don't know about -- I don't know about
23 those dates. I really don't.

24 Q Okay. Now, after 2011, do you have any

1 documented conversation that you can show me in
2 any document between you and CCS regarding raising
3 the score from .15 to .65, yes or no?

4 A I had nothing from 2008. Nothing.
5 2009, two --

6 Q Well, I just showed you the e-mails. Is
7 there anything else?

8 A They didn't get this from me.

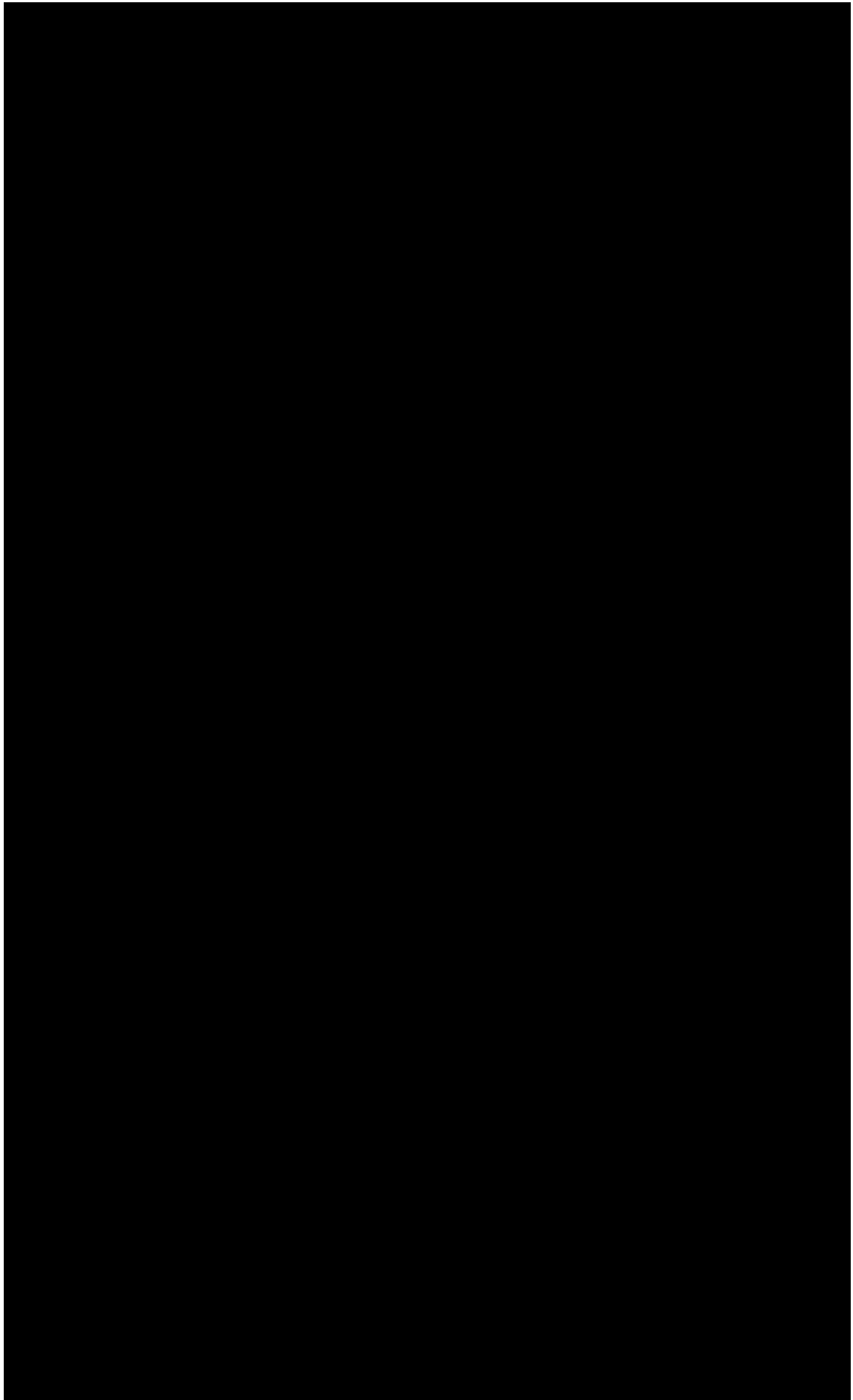
9 Q Okay. Whose -- who raised the score
10 within CVS? Was it the CVS IT department that did
11 it?

12 A All the information was reported. Frank
13 Devlin had the ultimate say because he was my
14 superior.

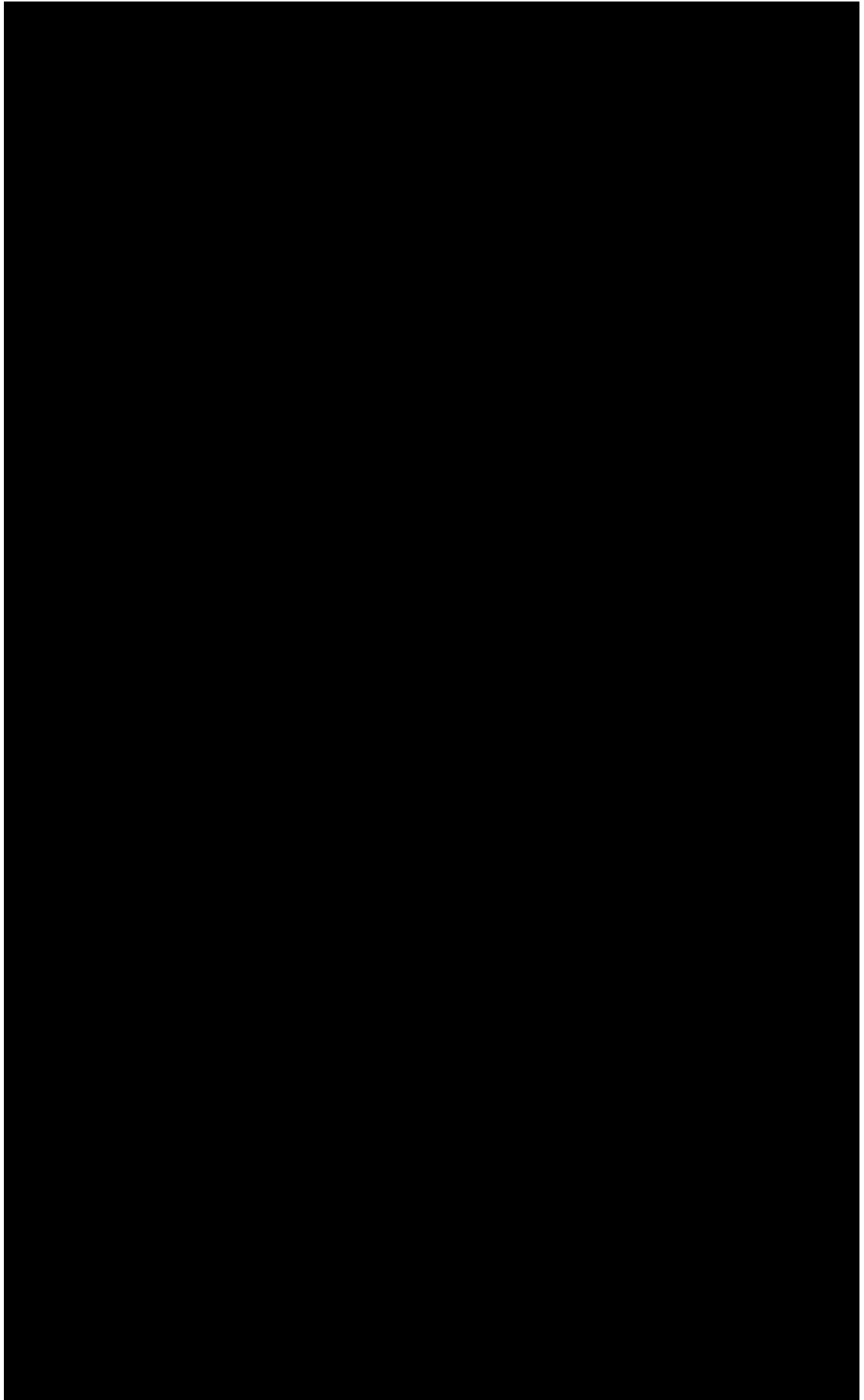
15 Q Okay. So it was Frank Devlin. Is that
16 right?

17 A He would have to bless it. Frank would
18 have to bless it to the next level. I don't know
19 who Frank worked with. I do know that this
20 company was part of the -- part of the
21 understanding. There were several conference
22 calls. We even had our field guys, the analysts
23 and the regional manager, involved with this to
24 explain their investigations.

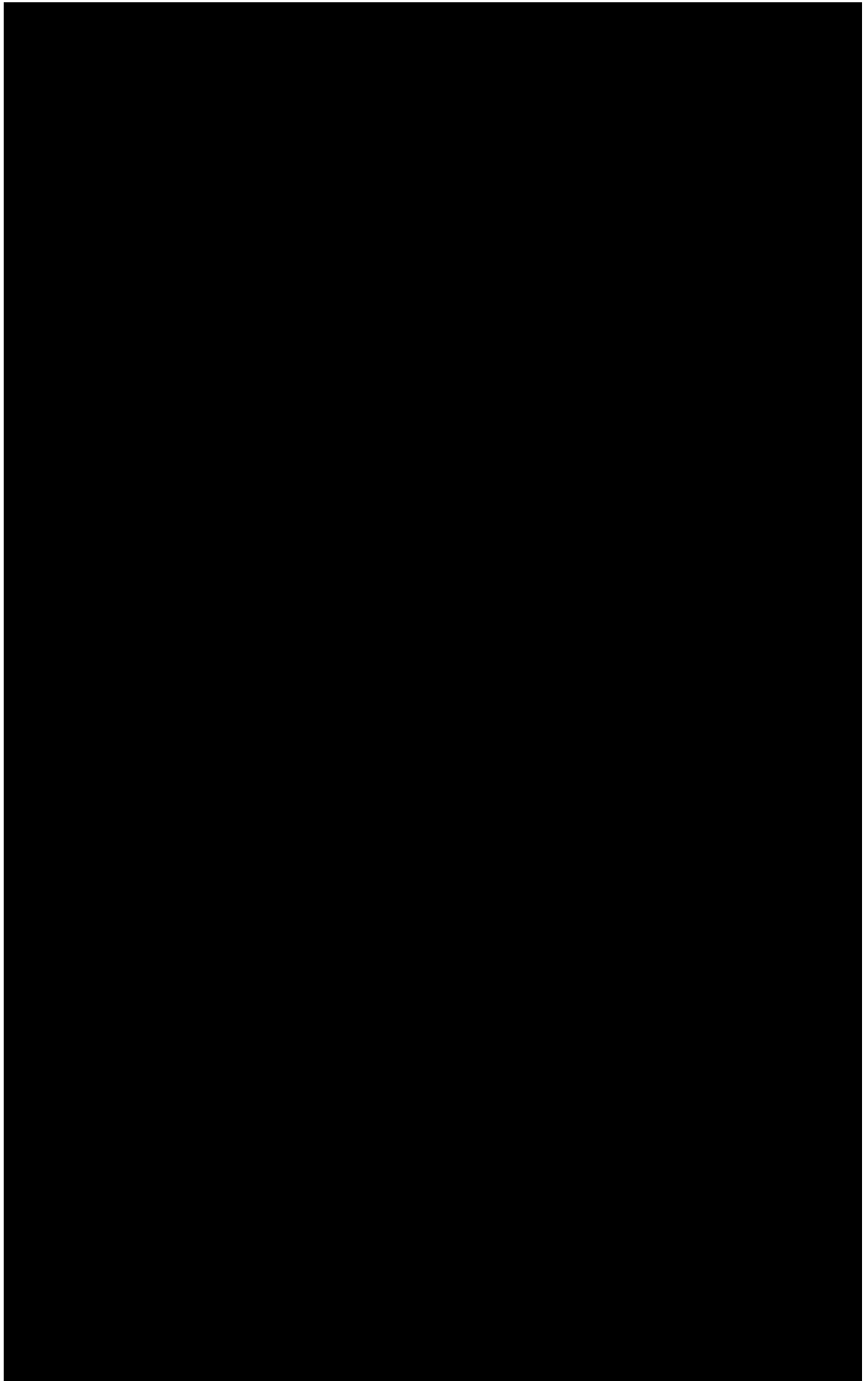
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



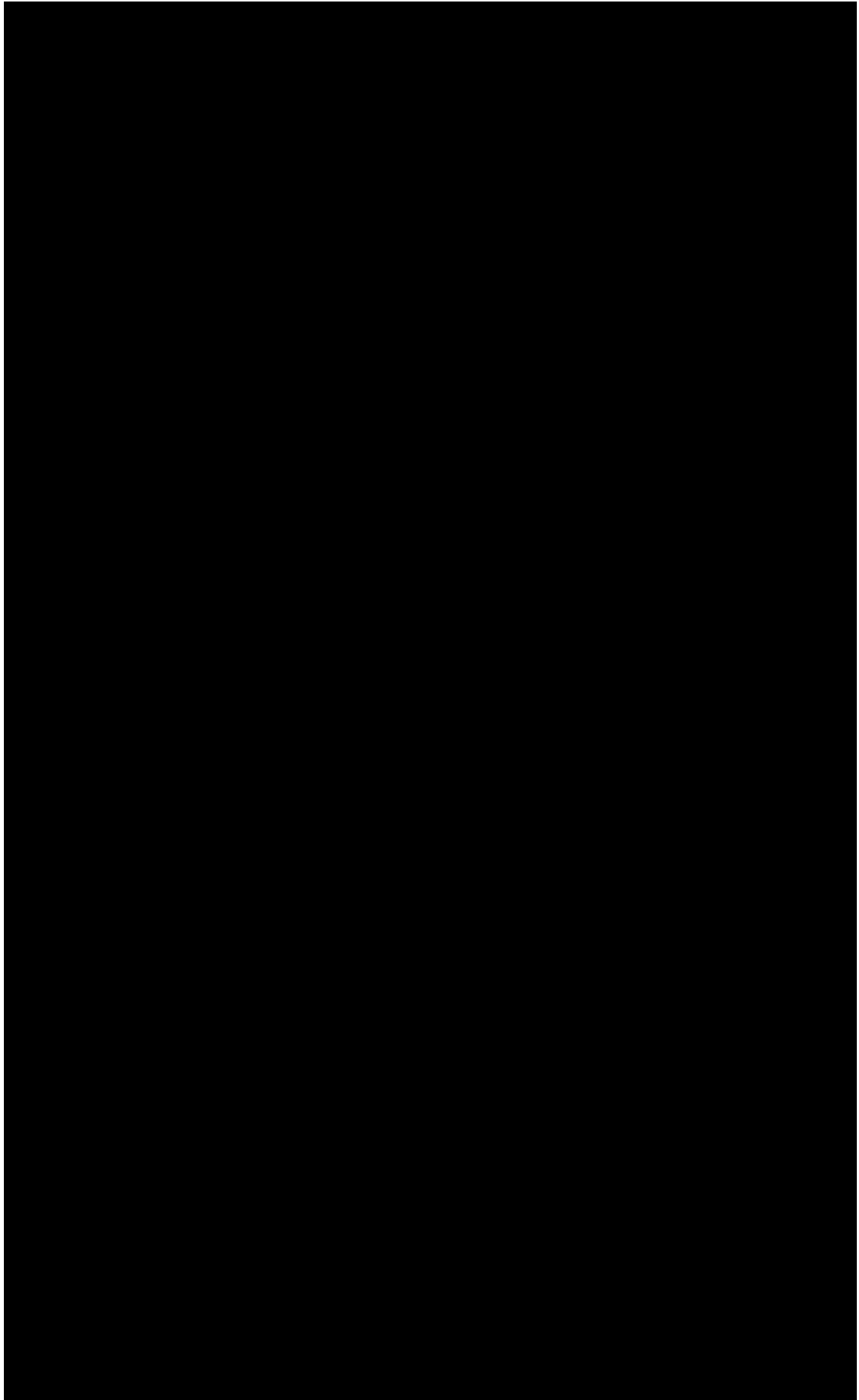
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



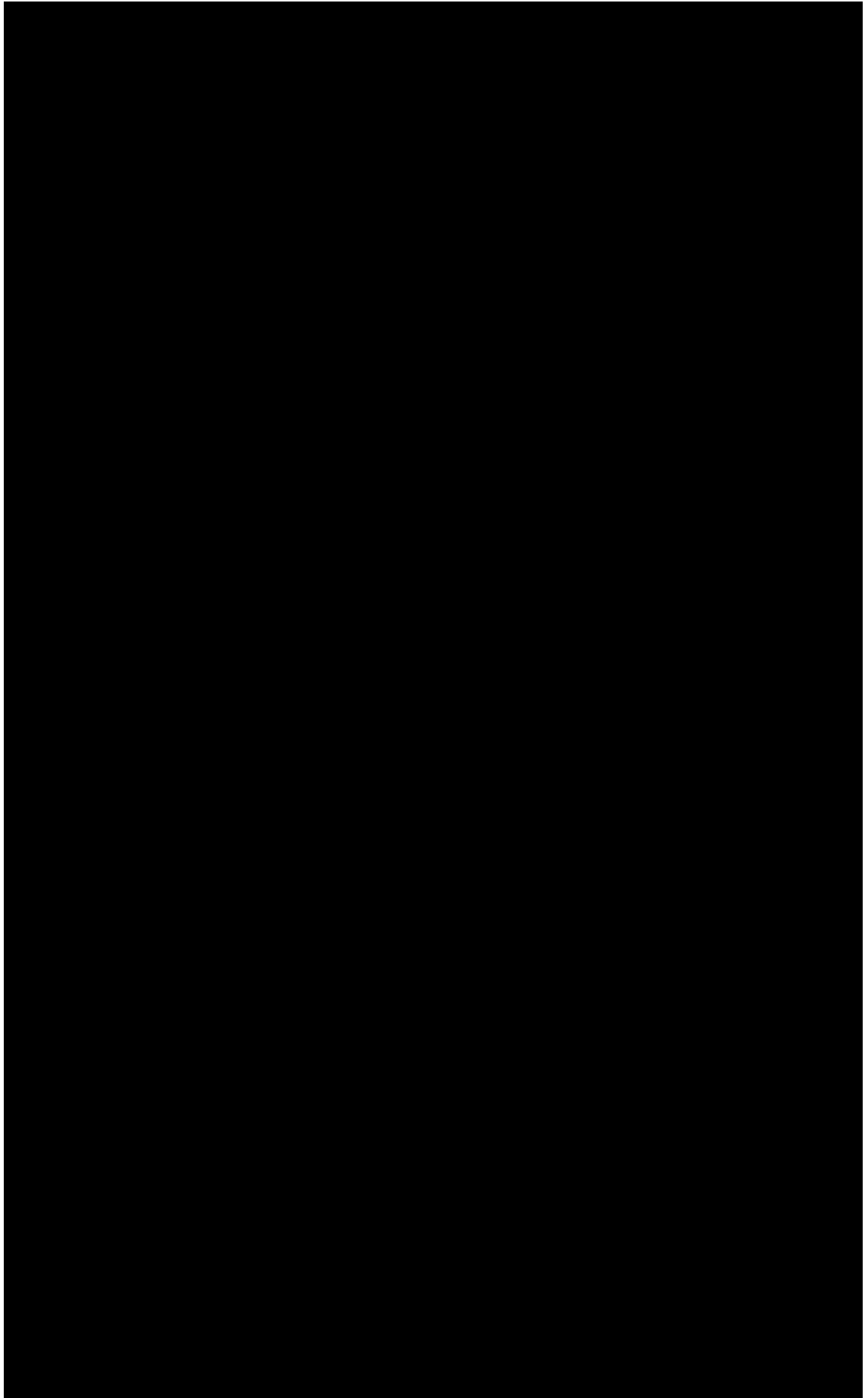
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



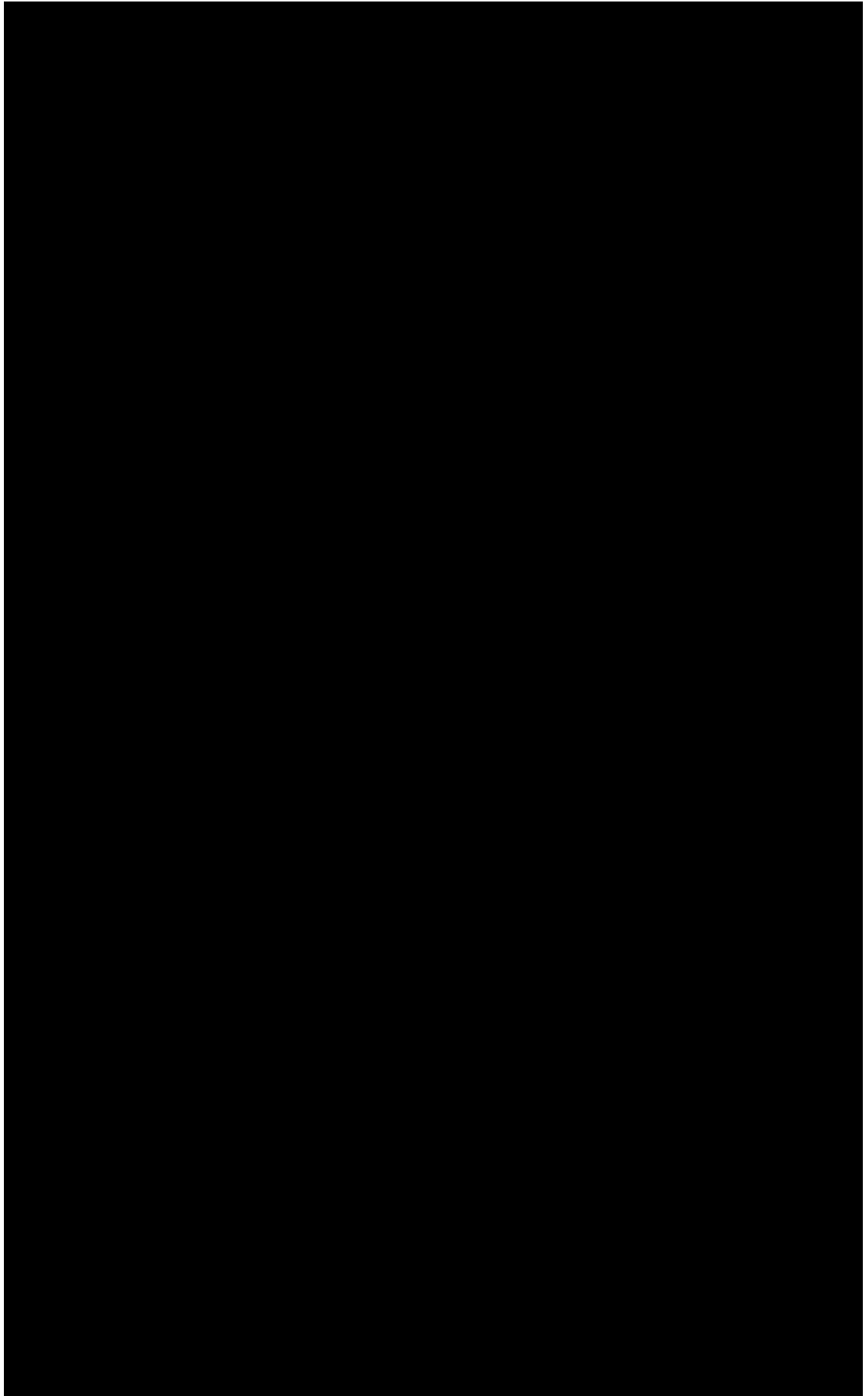
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



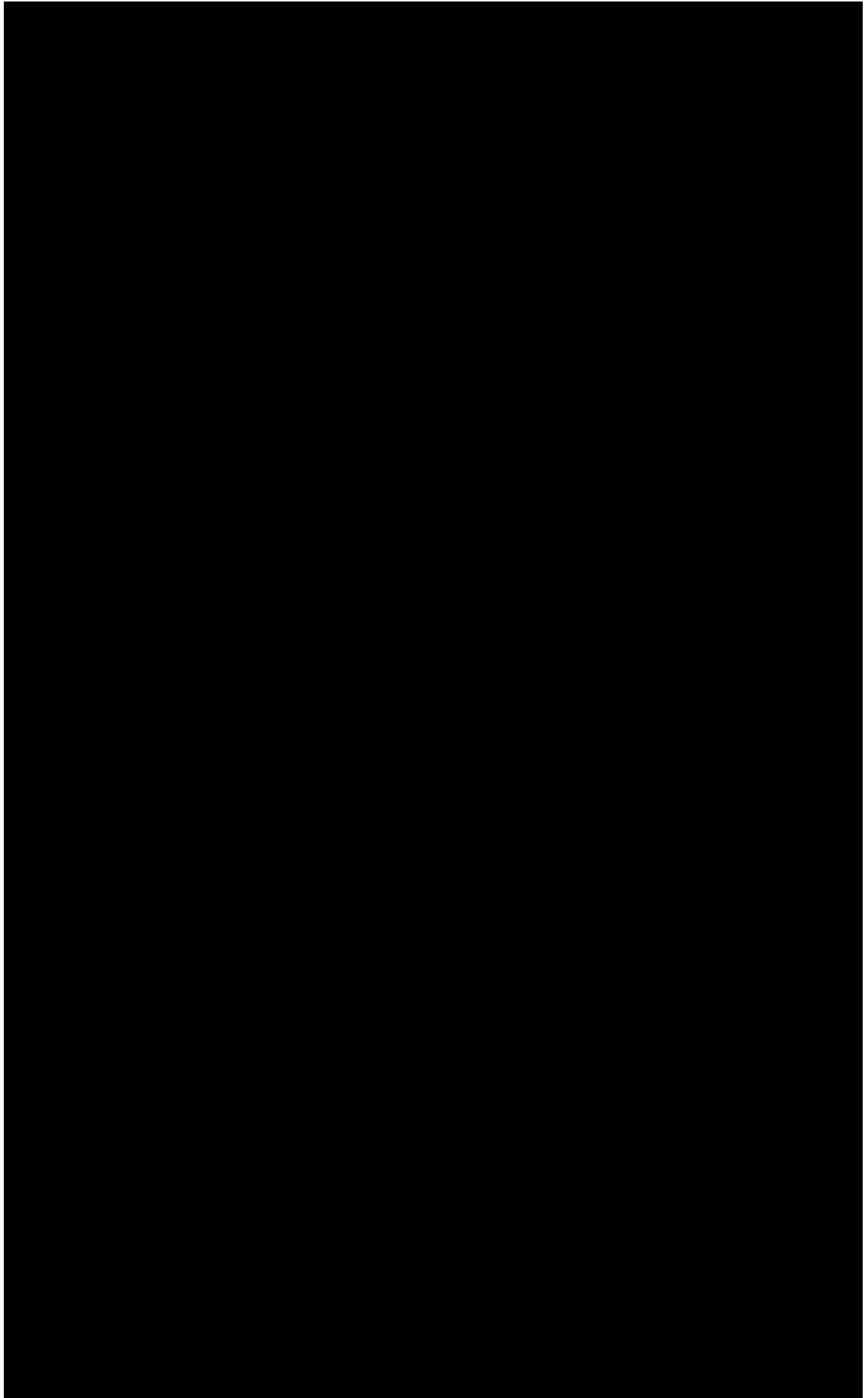
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



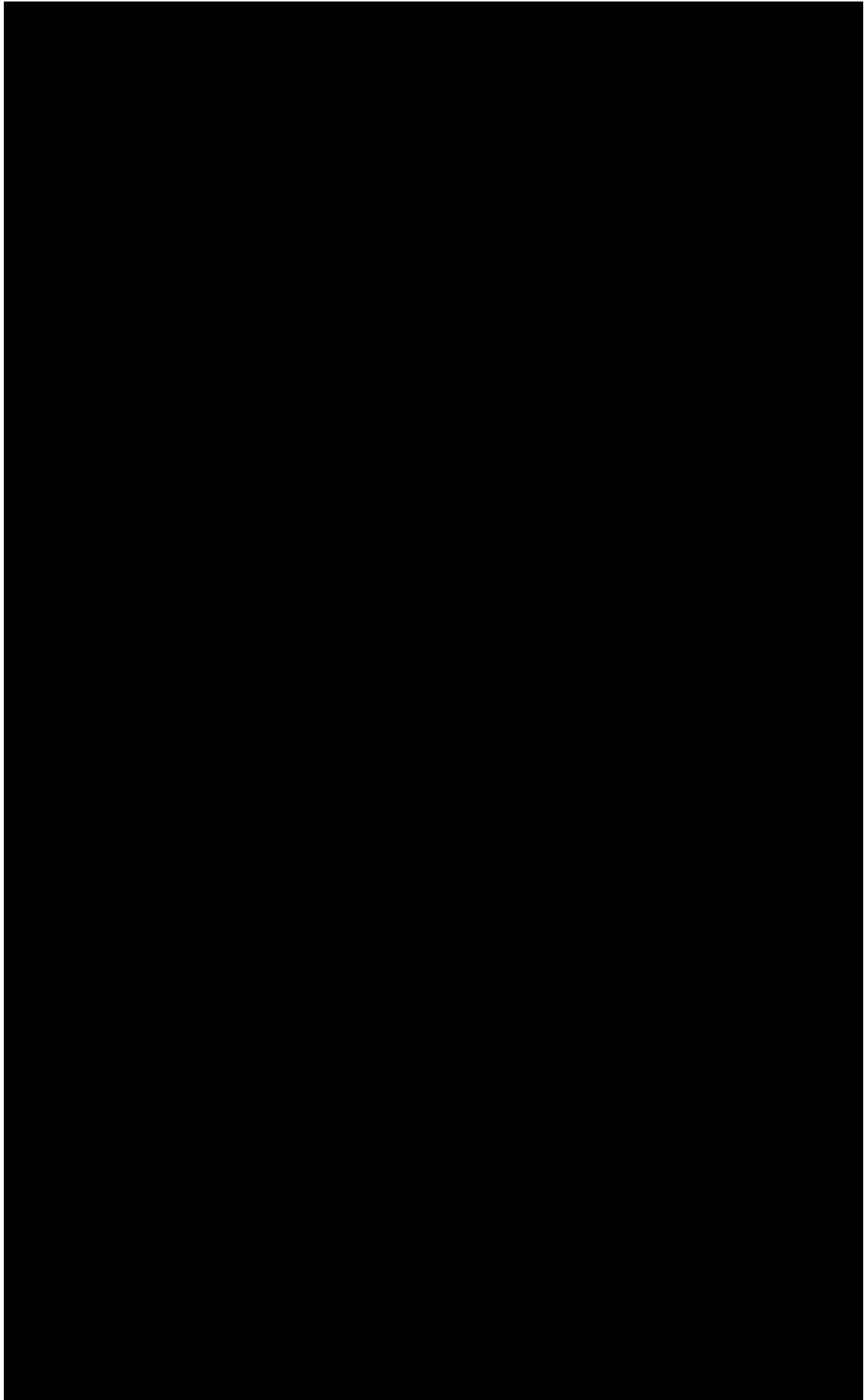
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



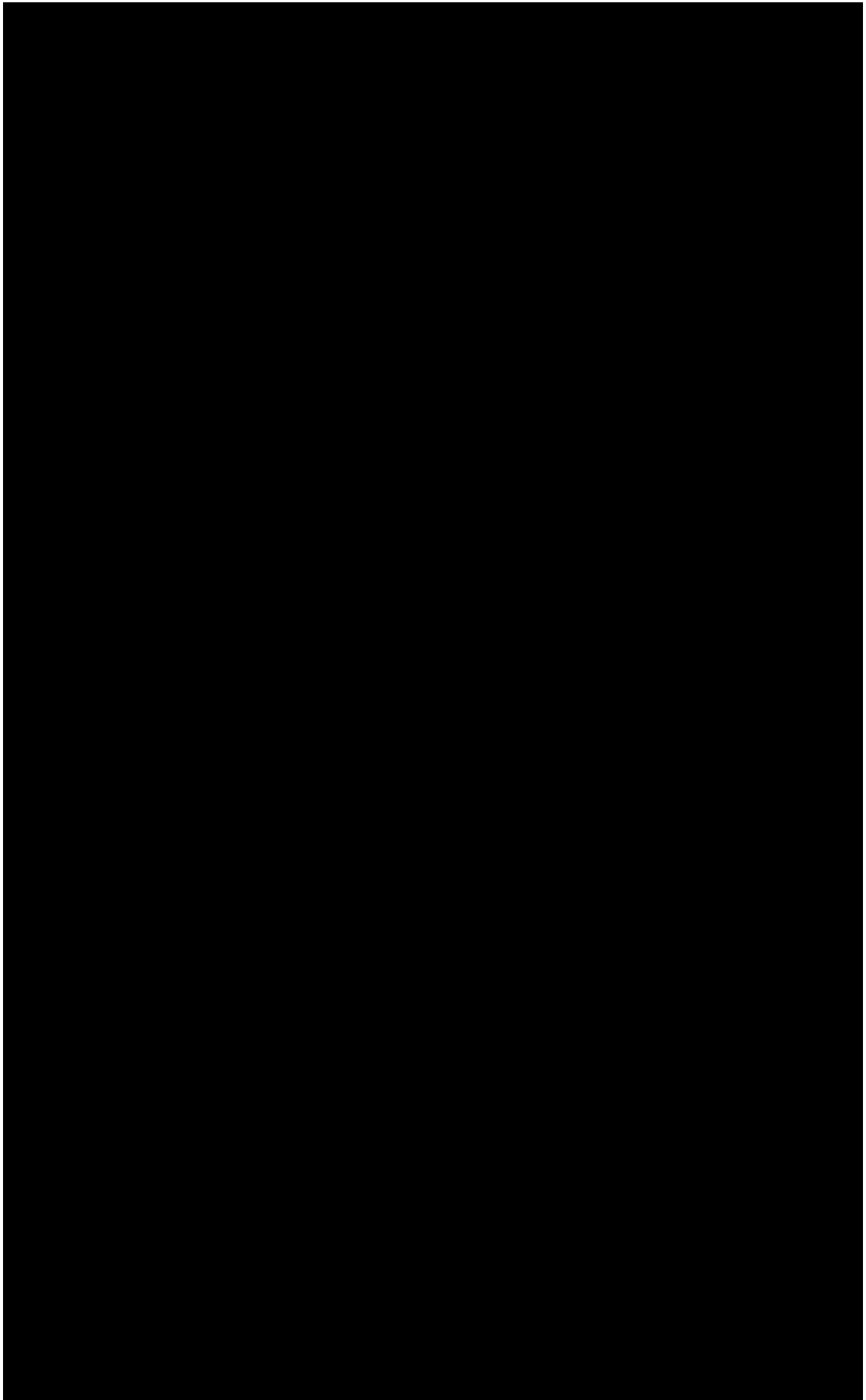
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



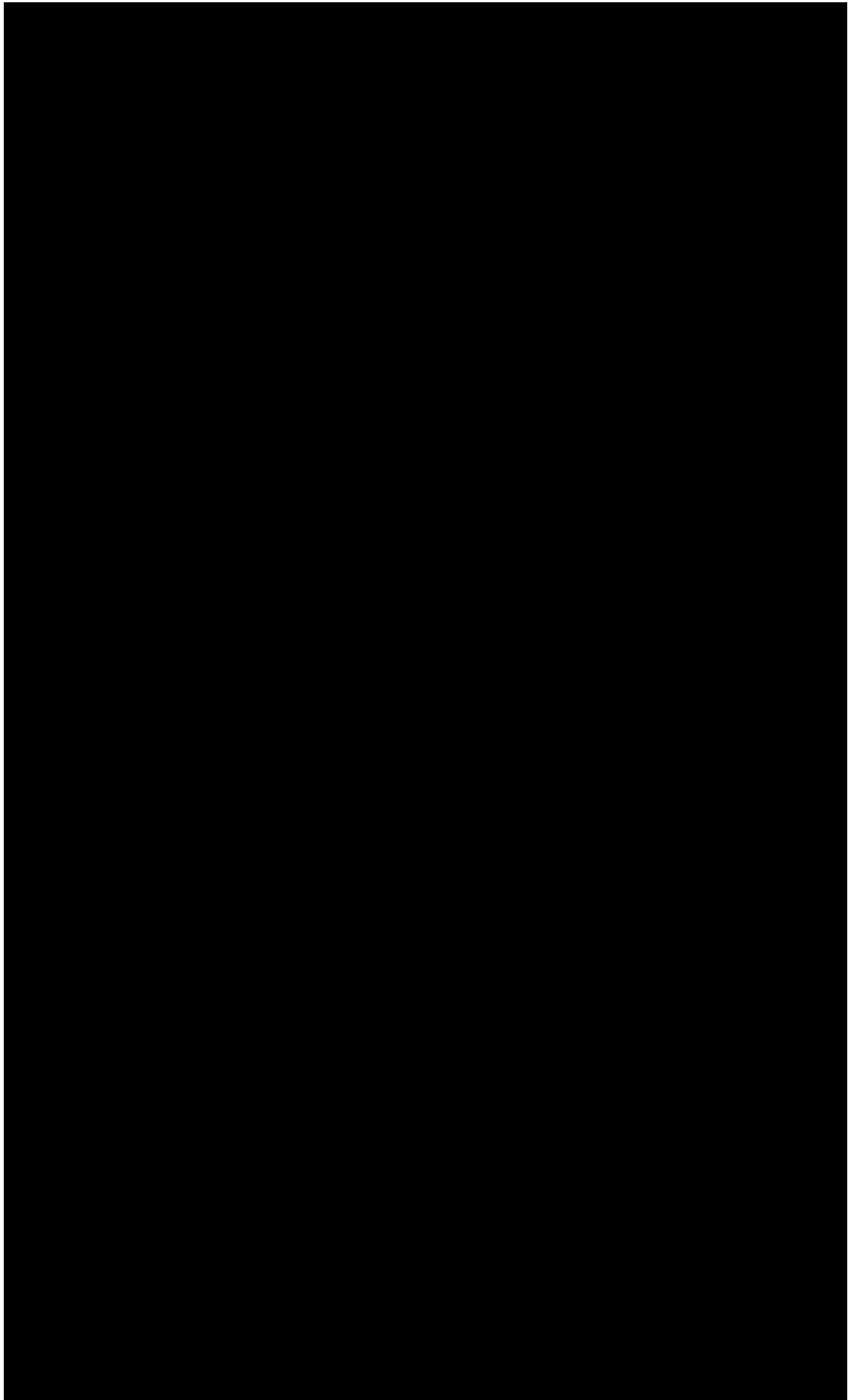
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



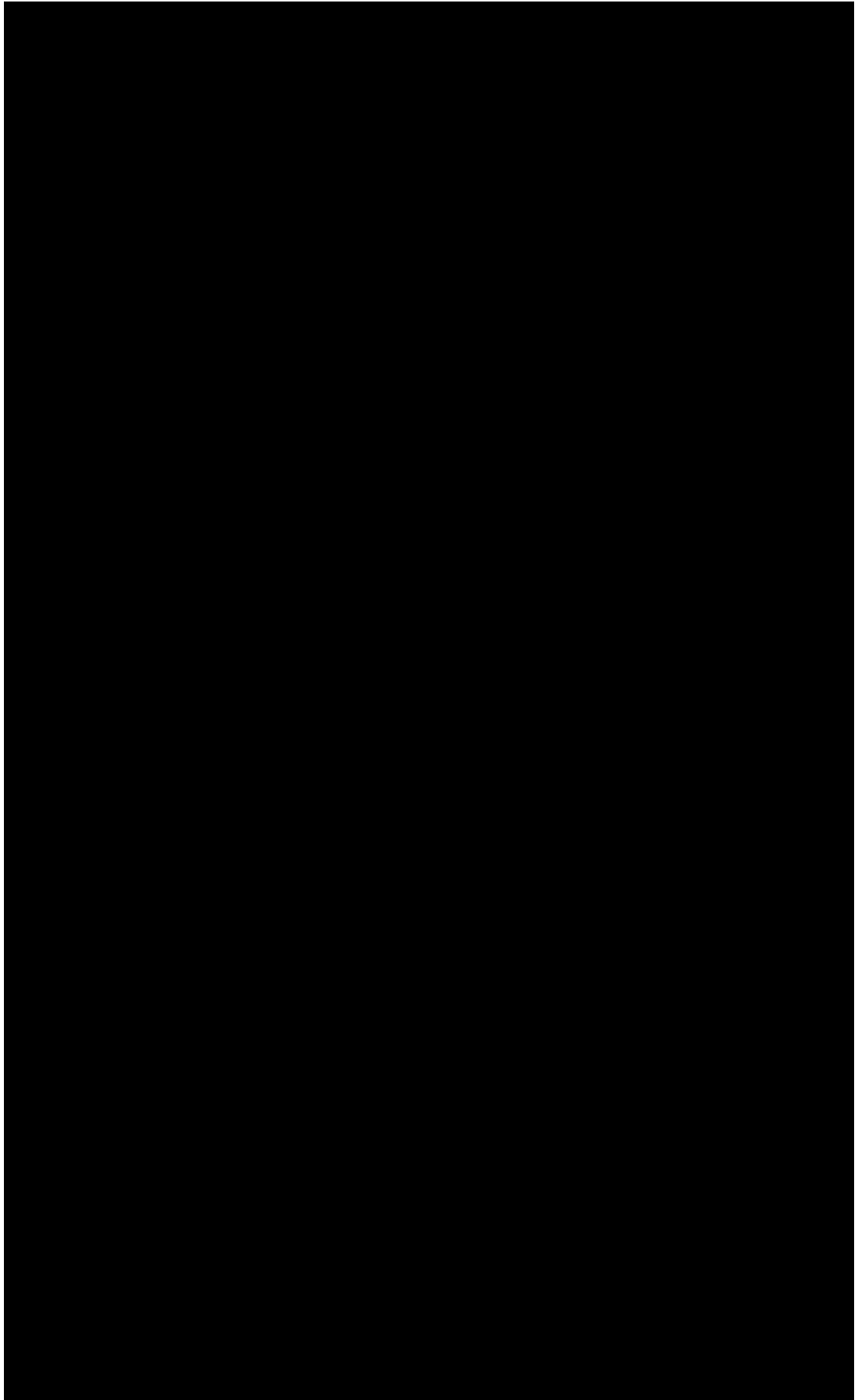
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



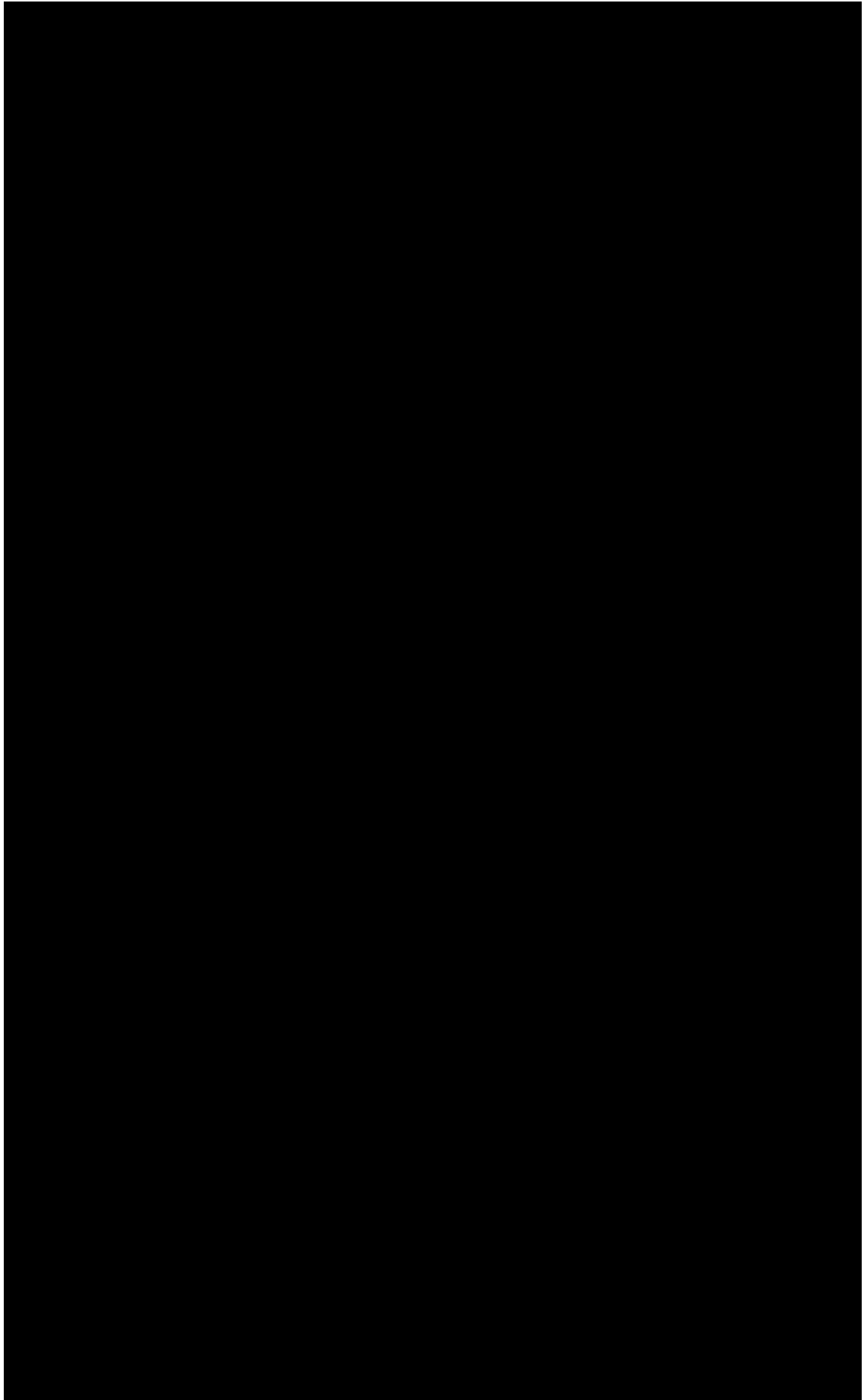
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



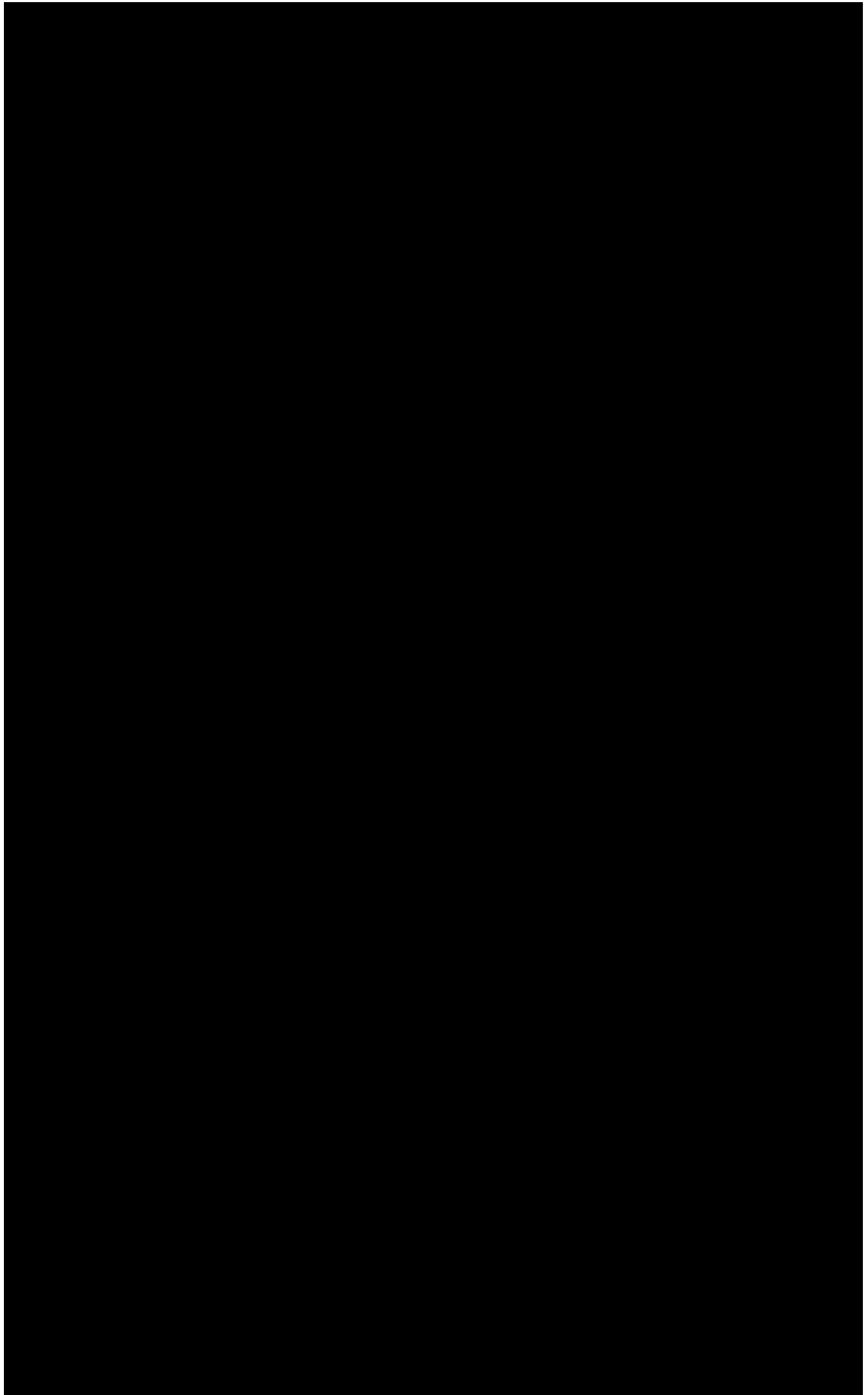
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



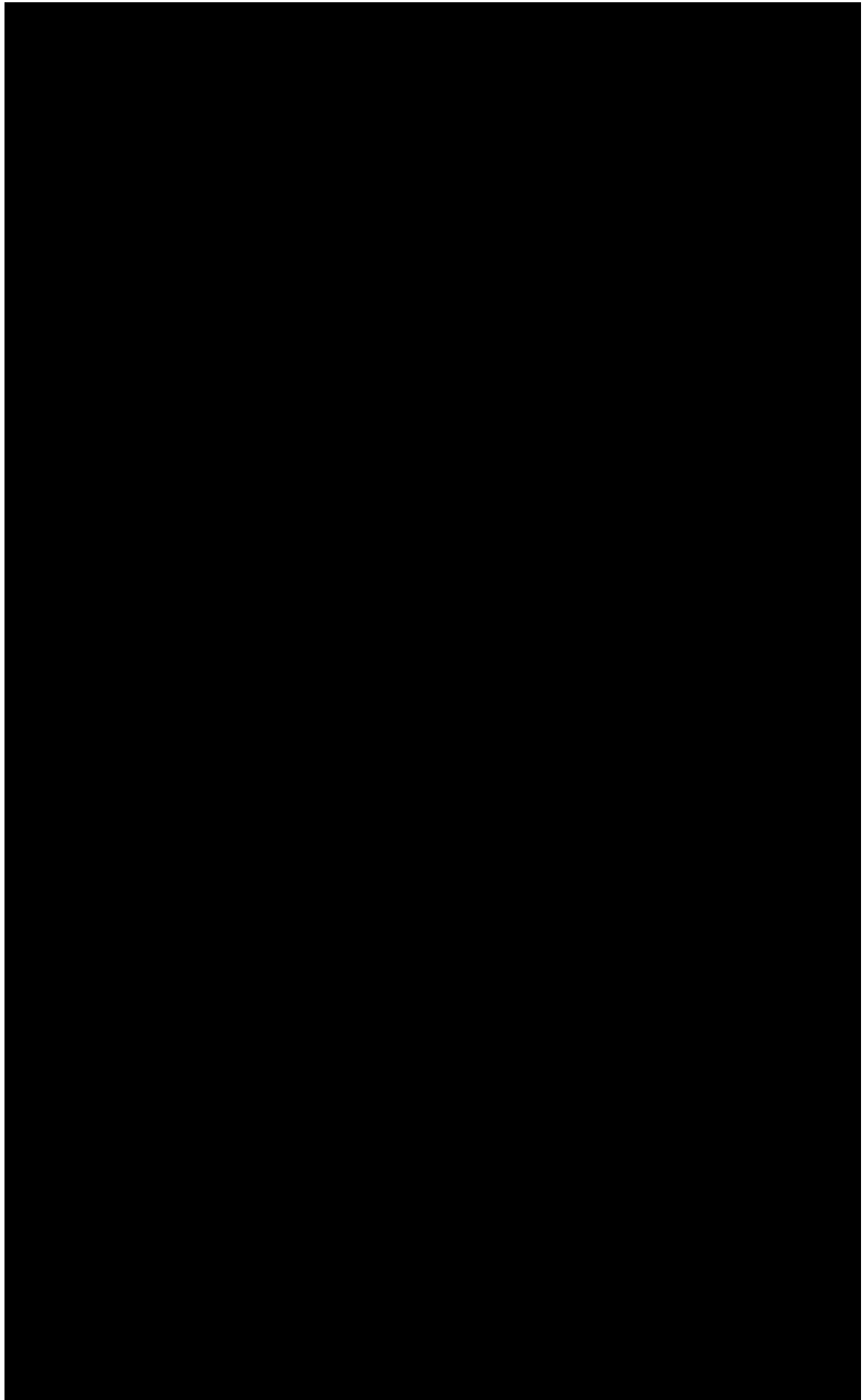
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



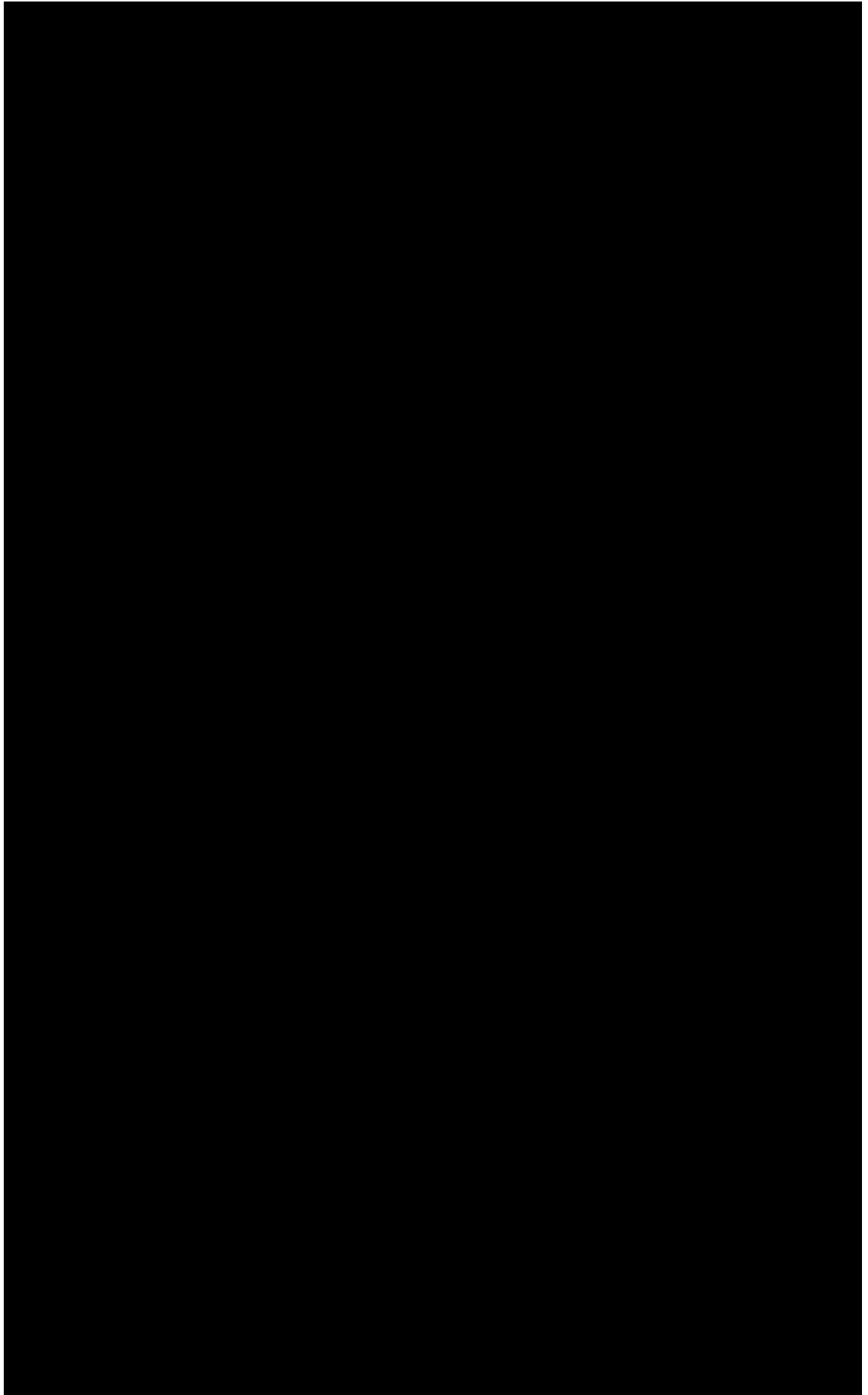
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



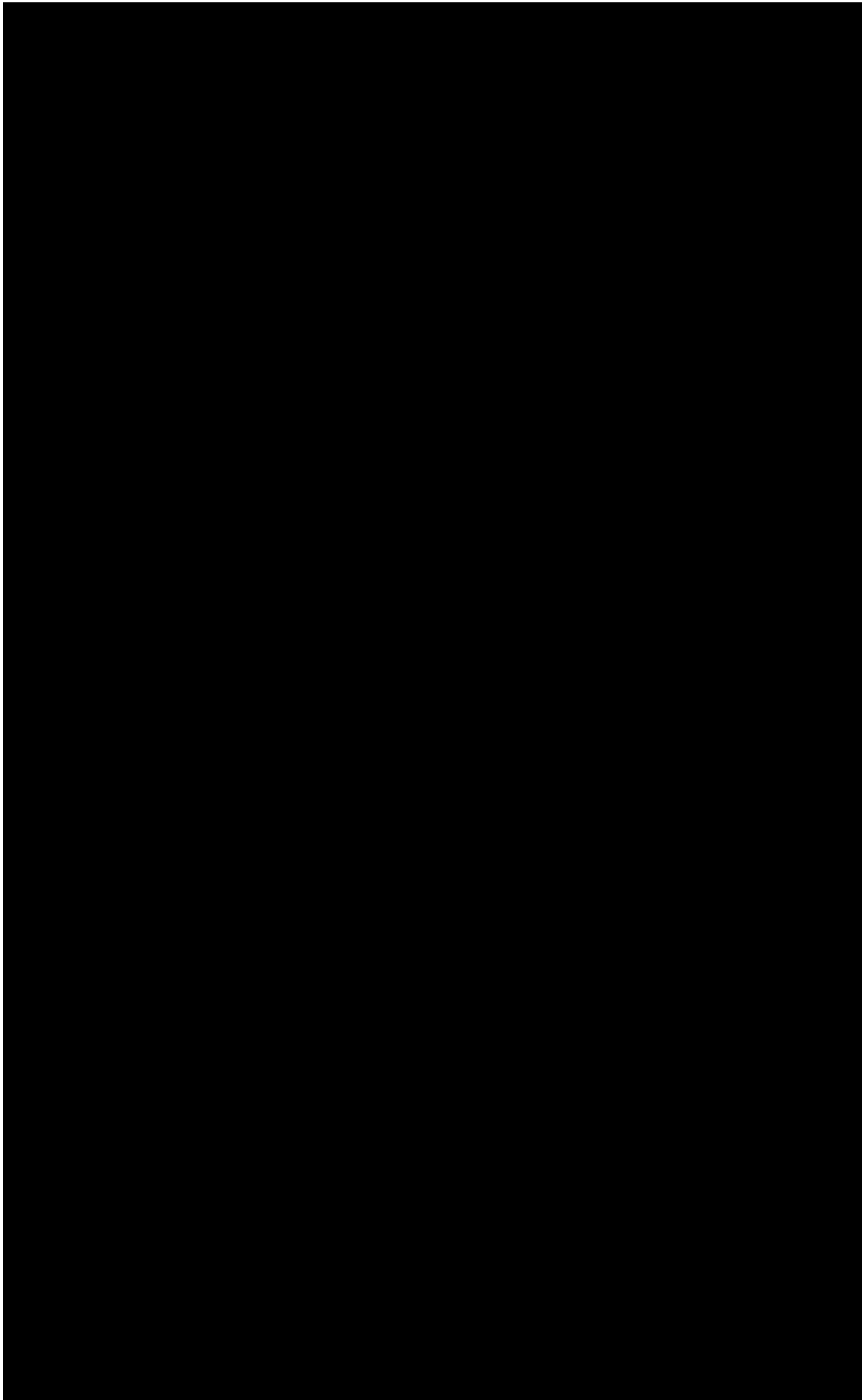
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



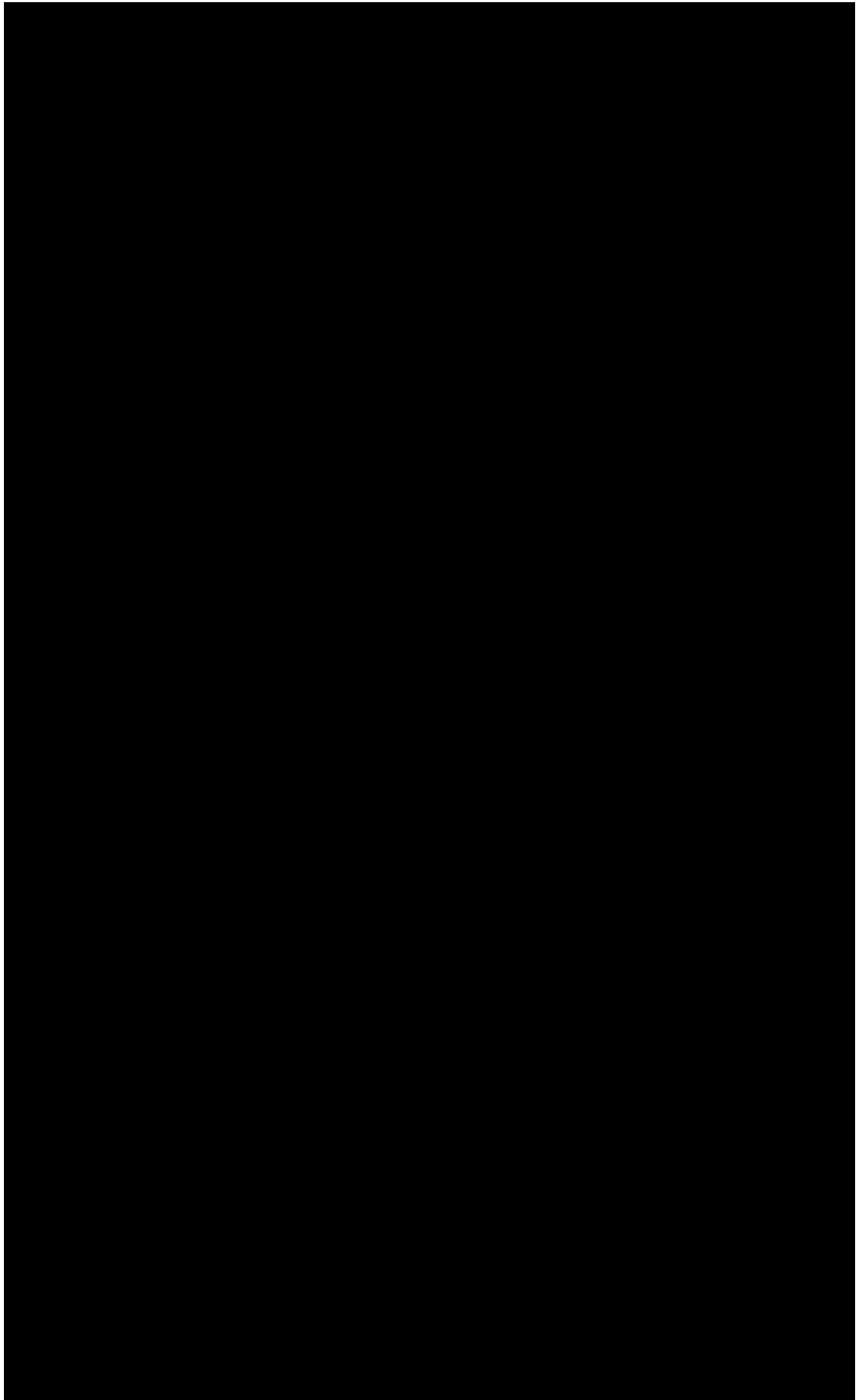
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



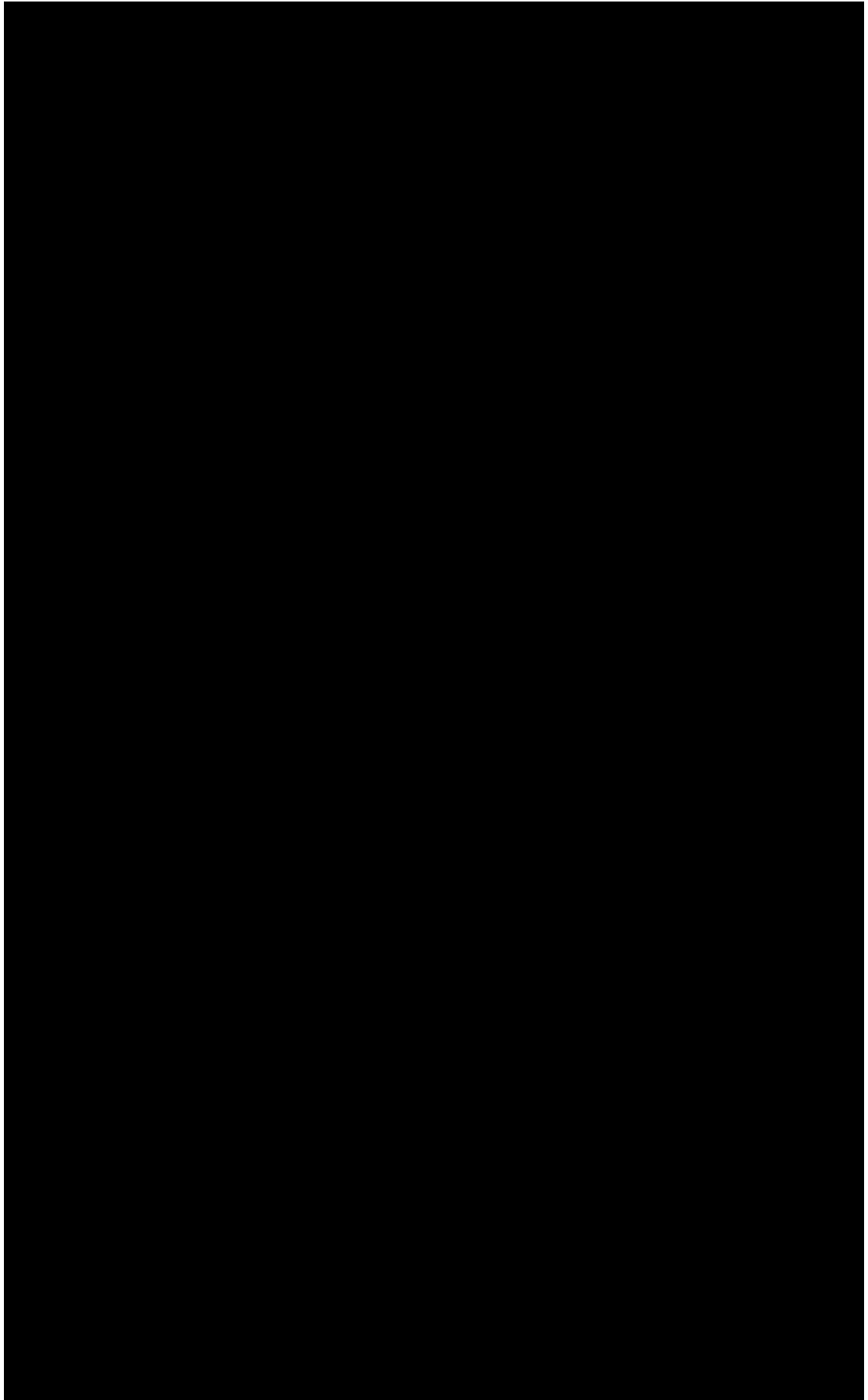
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



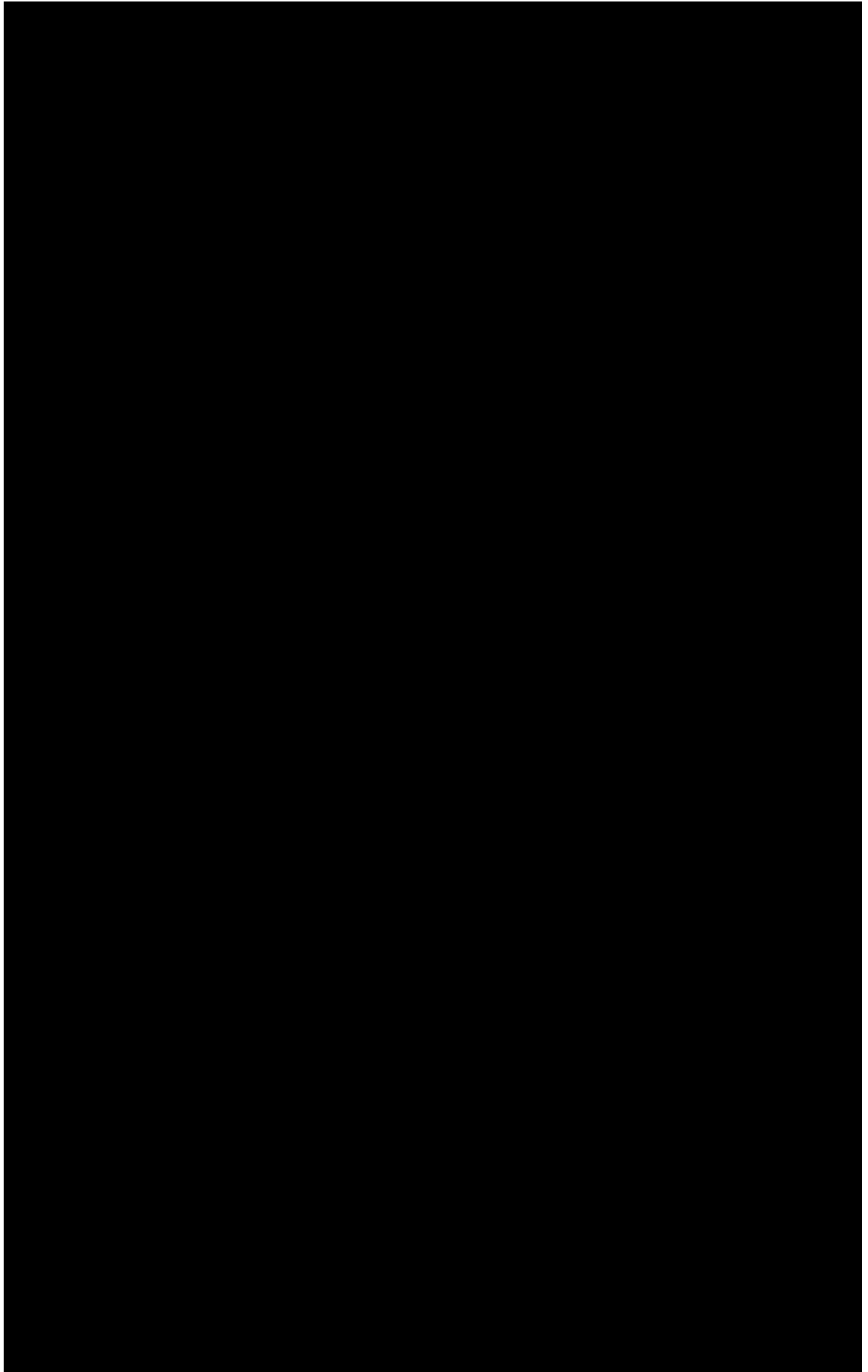
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



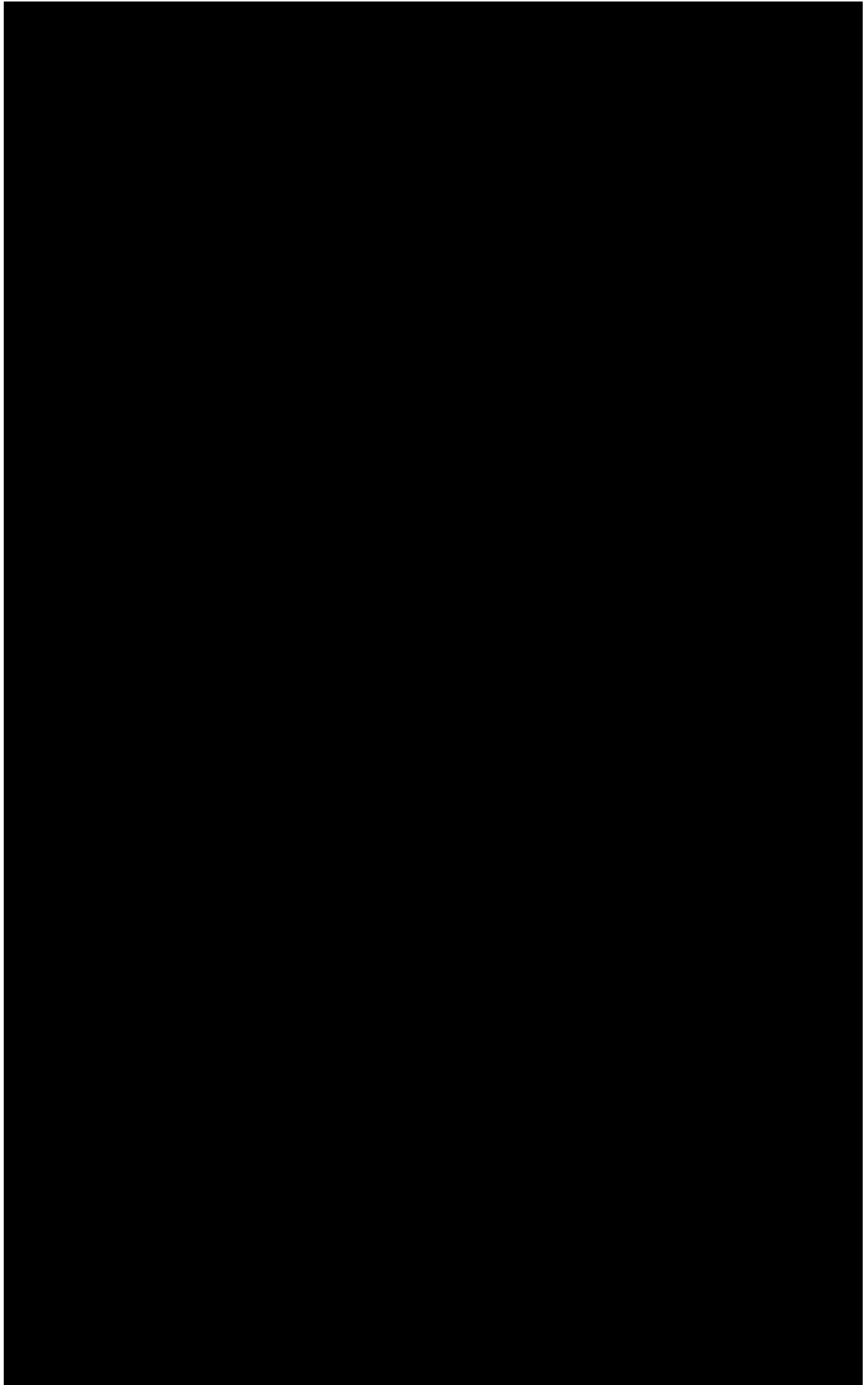
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



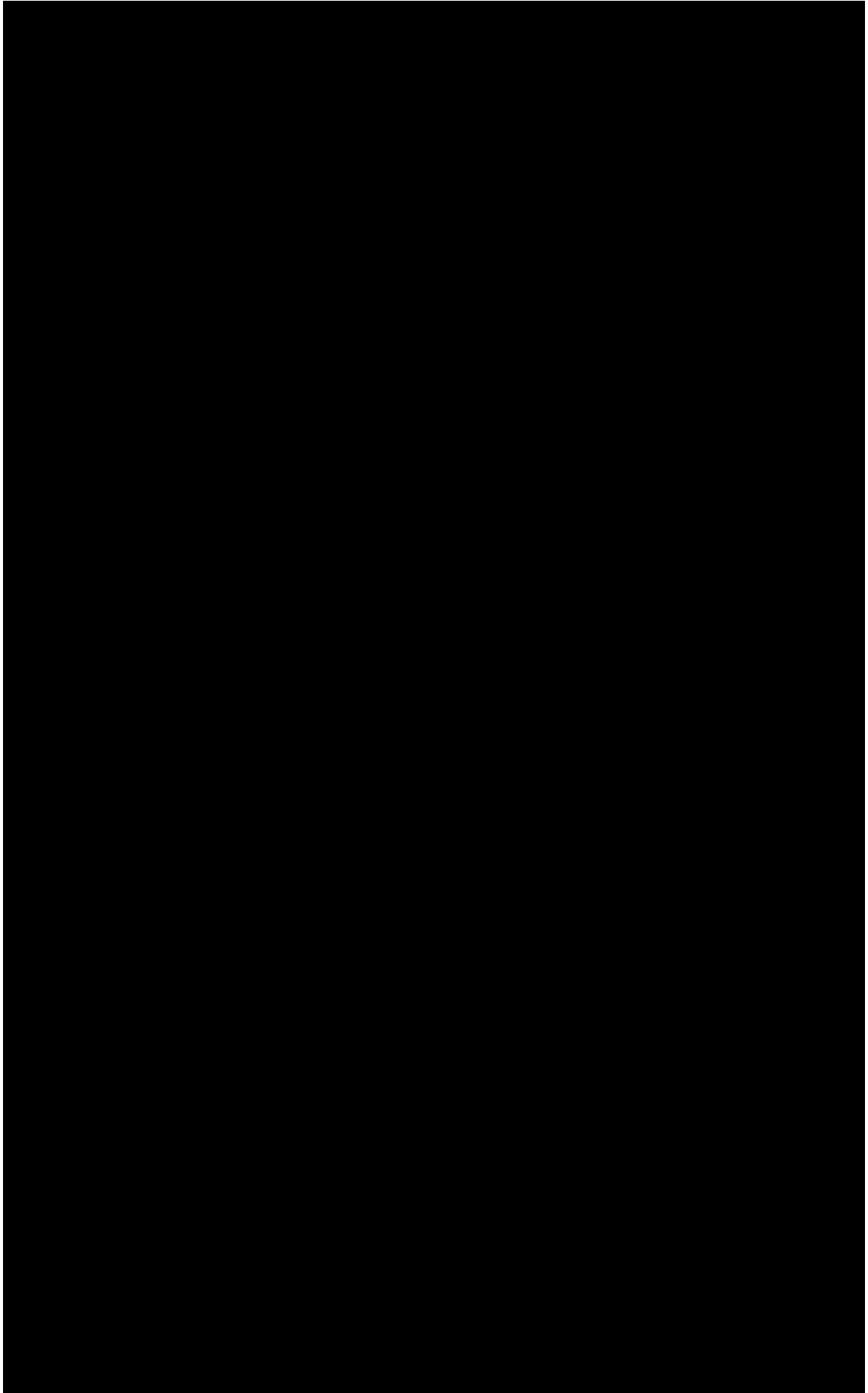
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



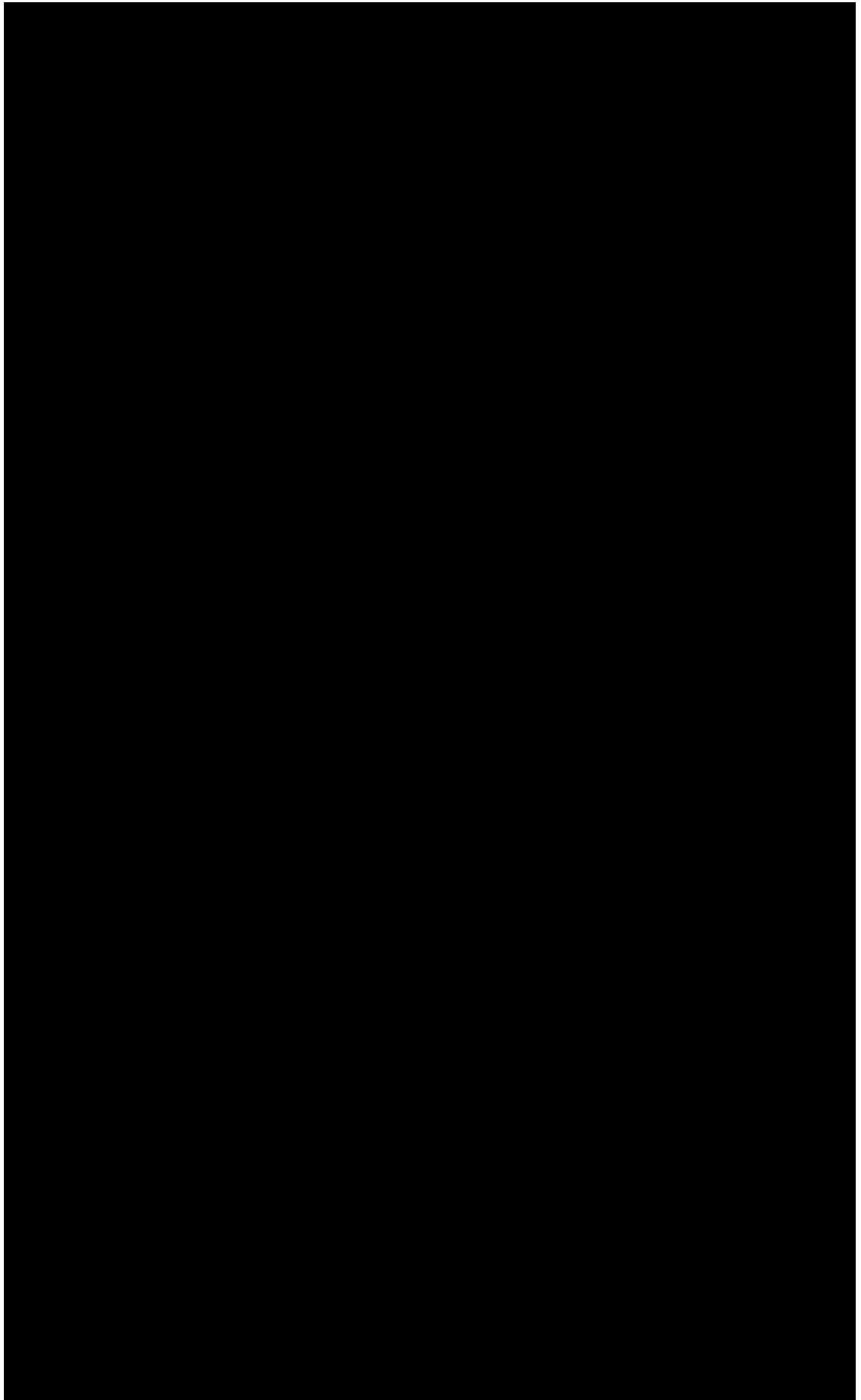
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



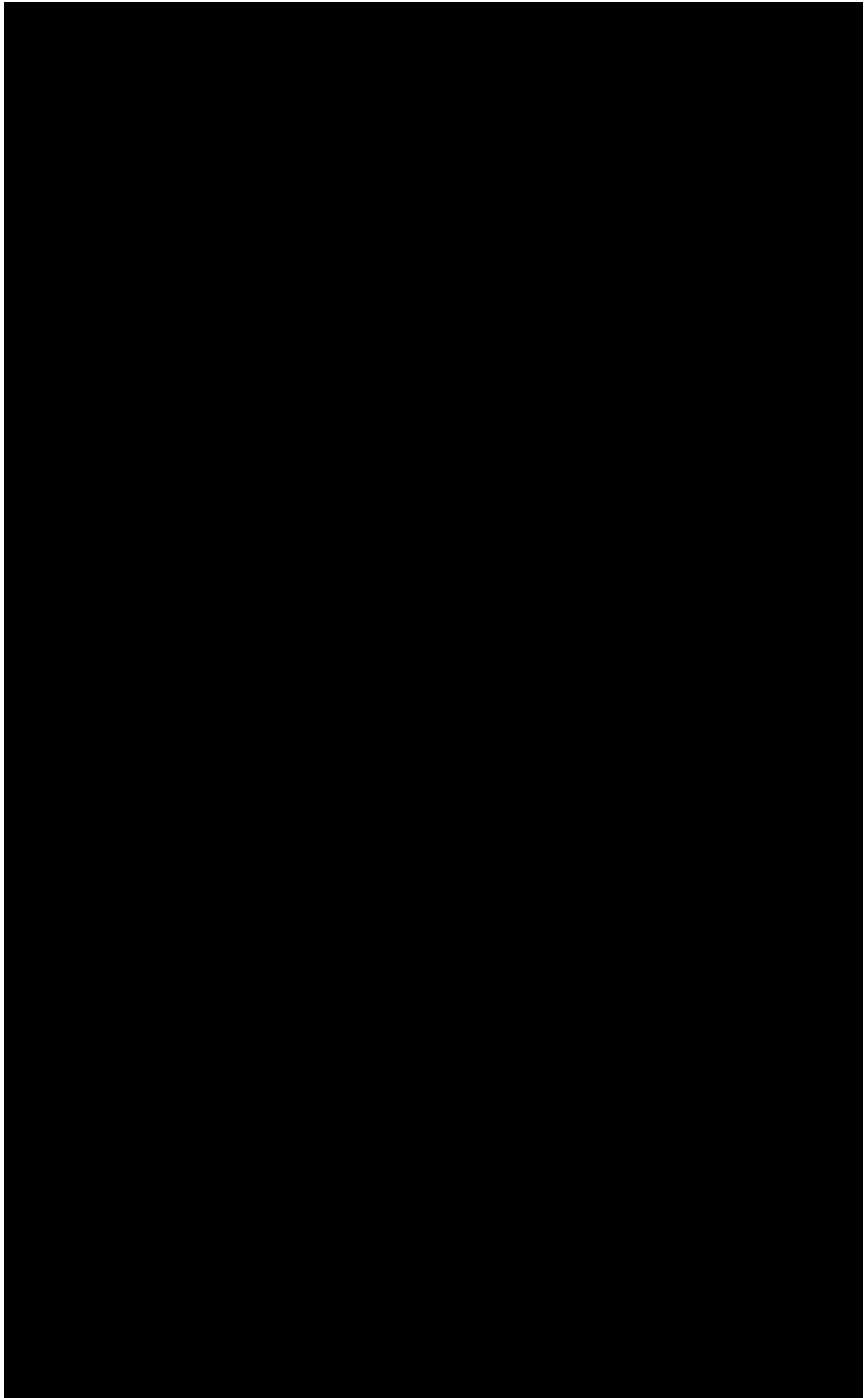
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



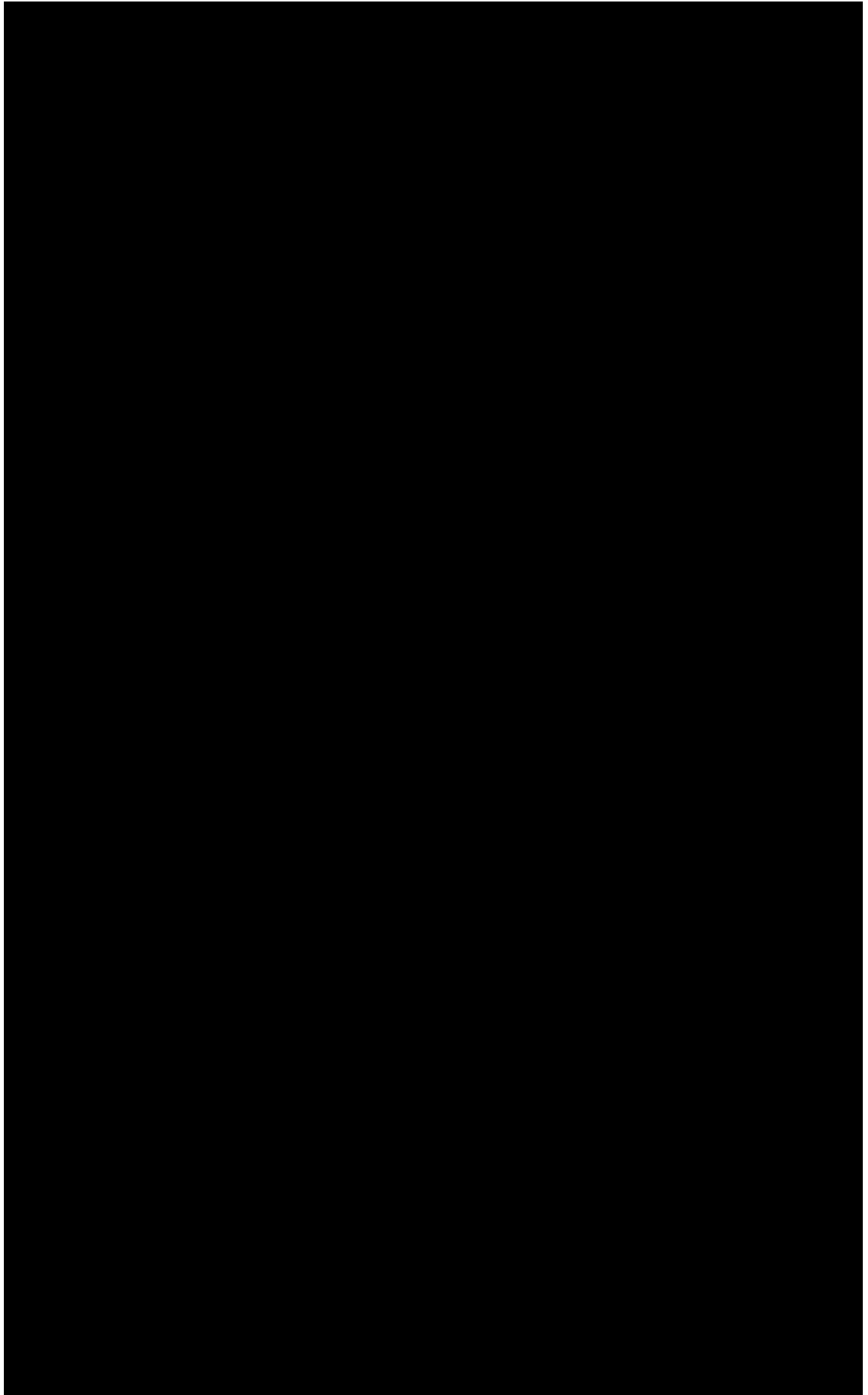
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



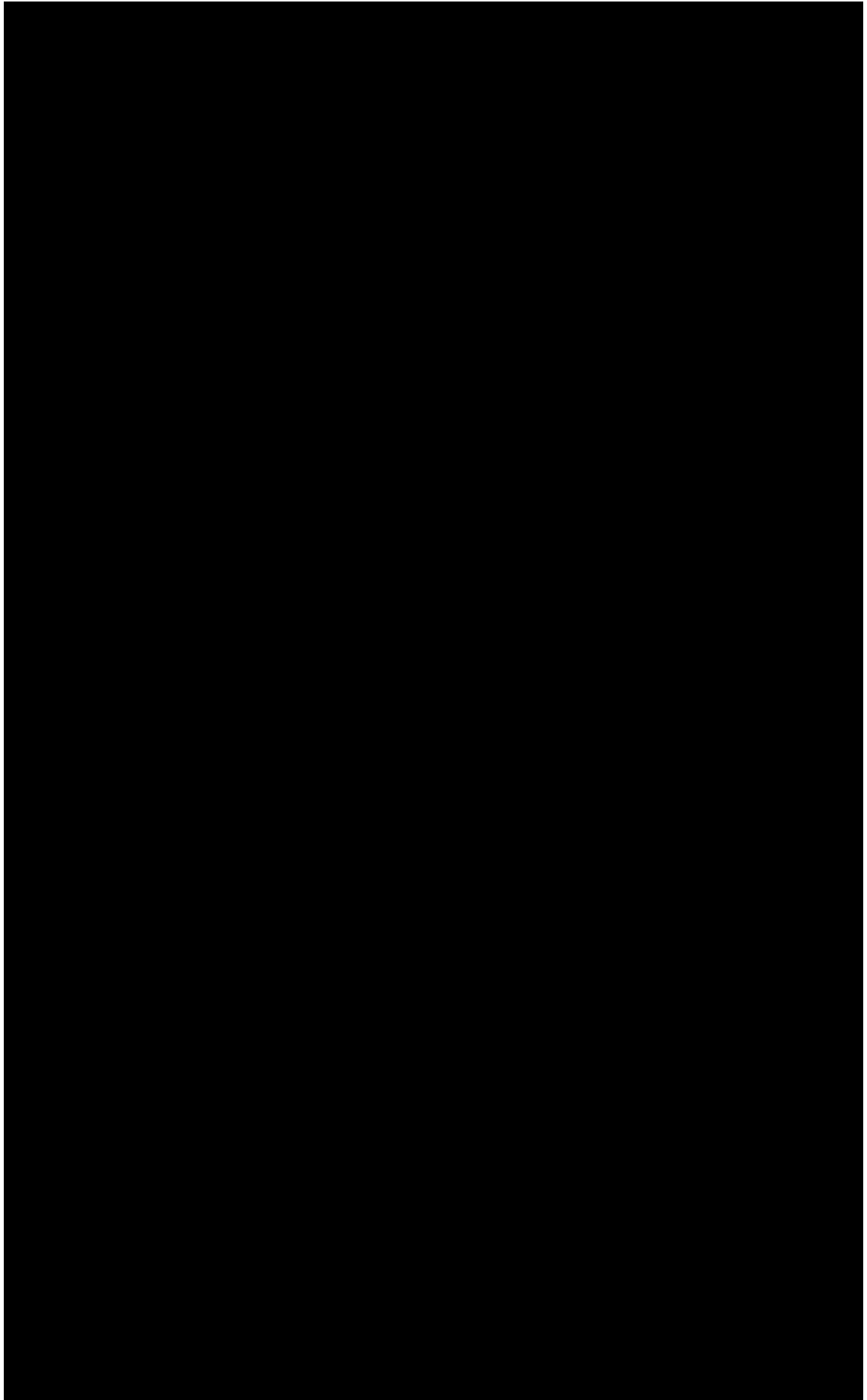
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



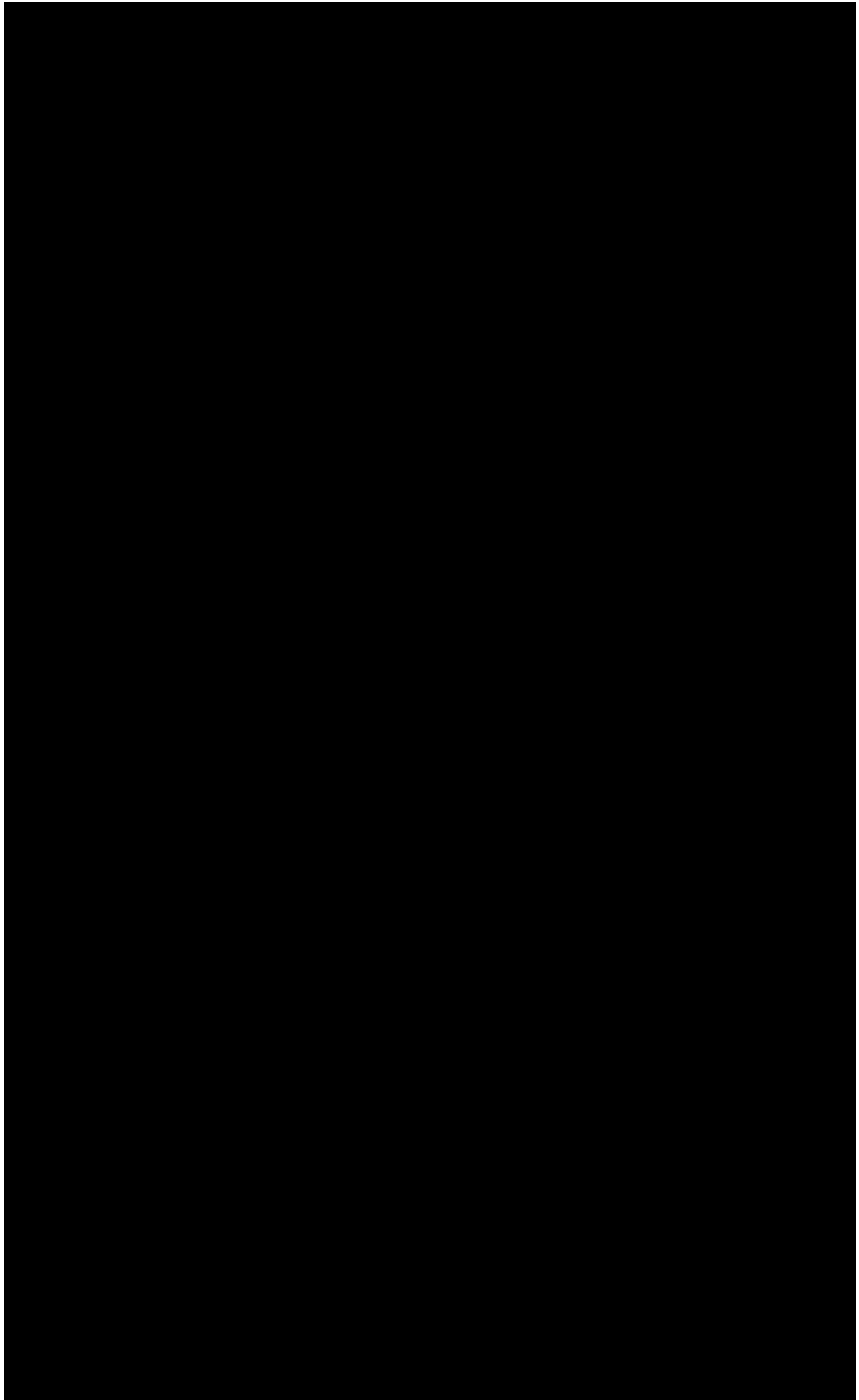
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



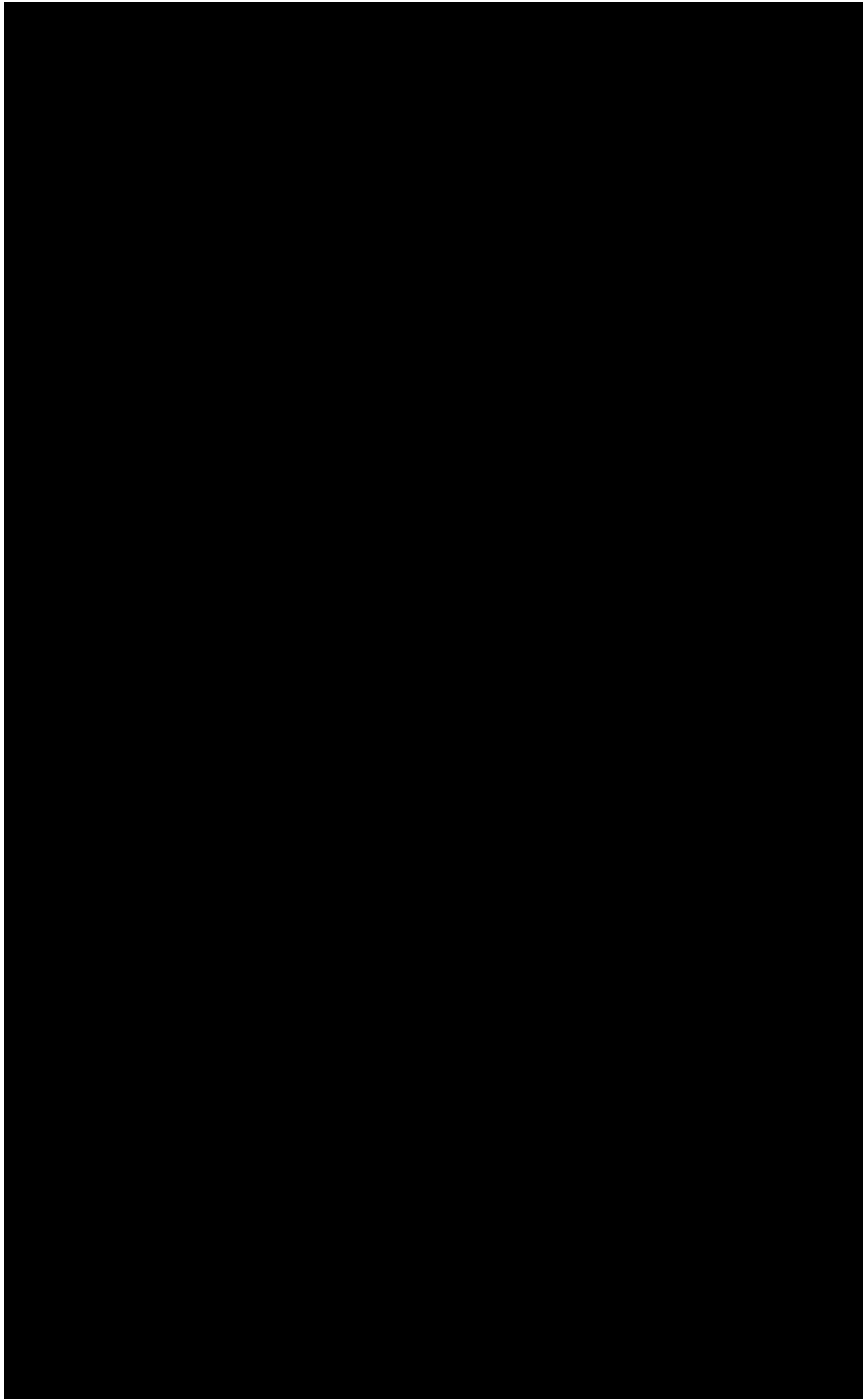
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



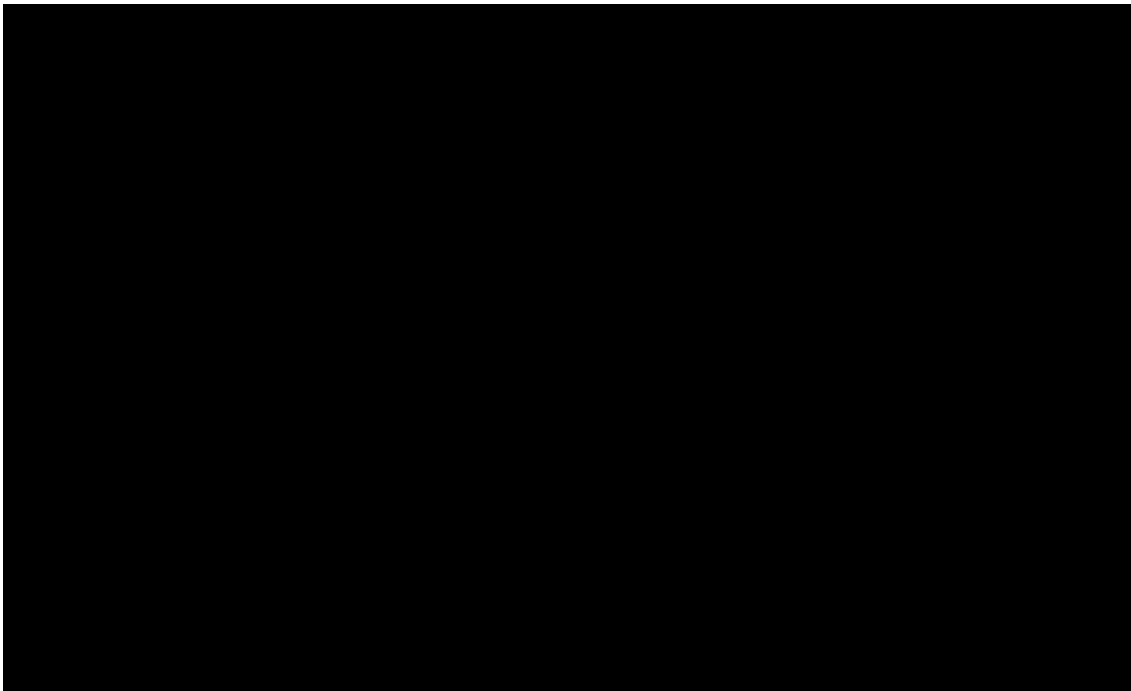
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

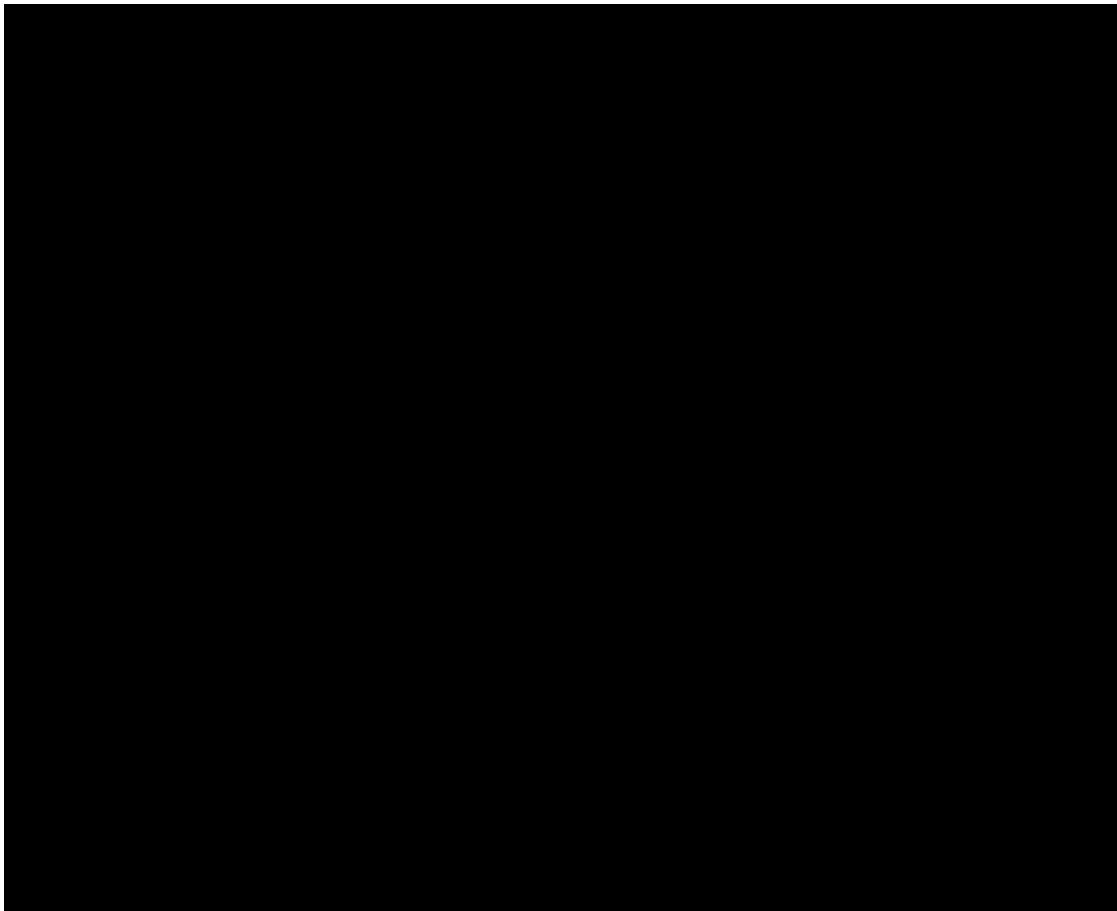


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

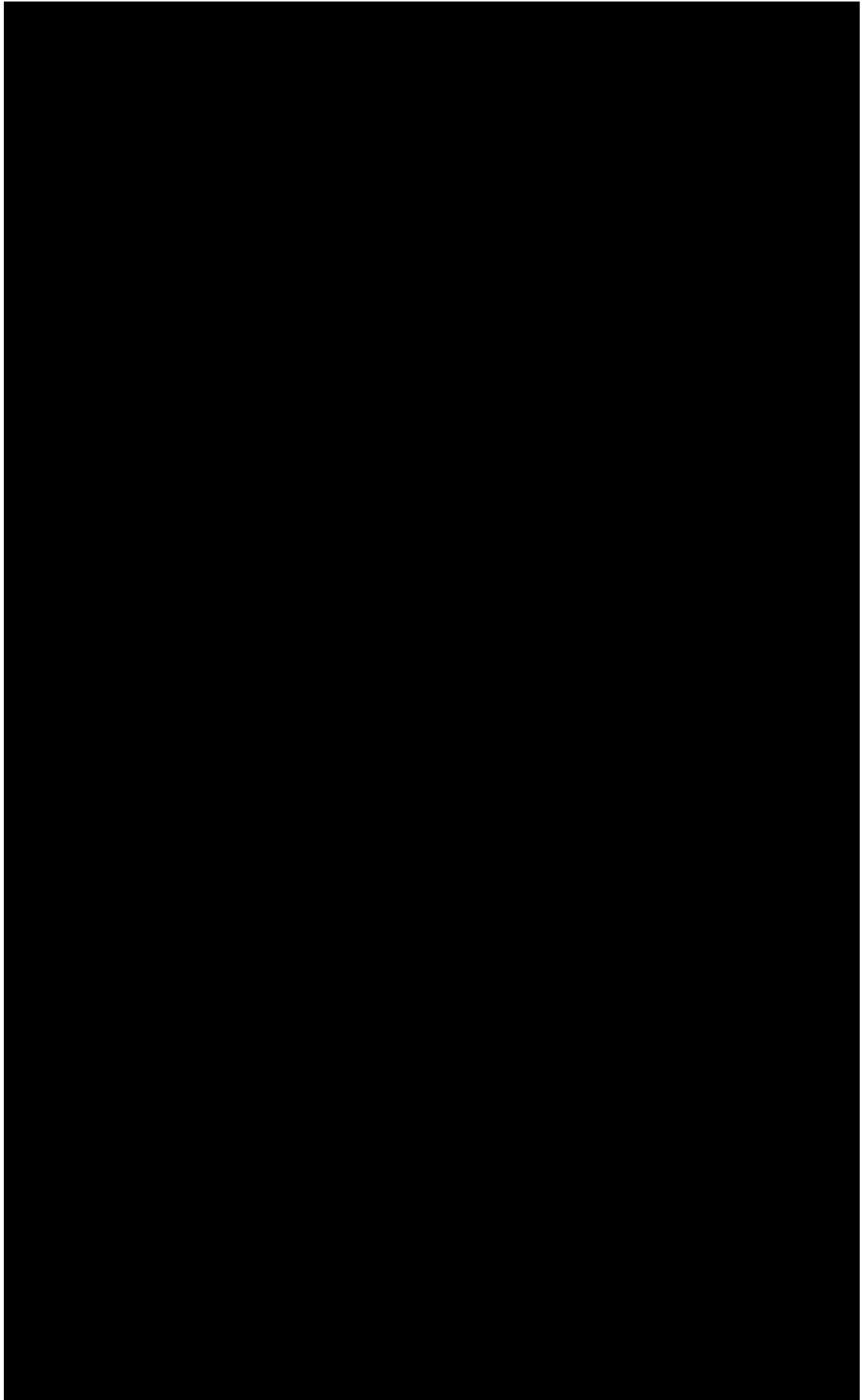


(Exhibit No. 143 was premarked for
identification.)

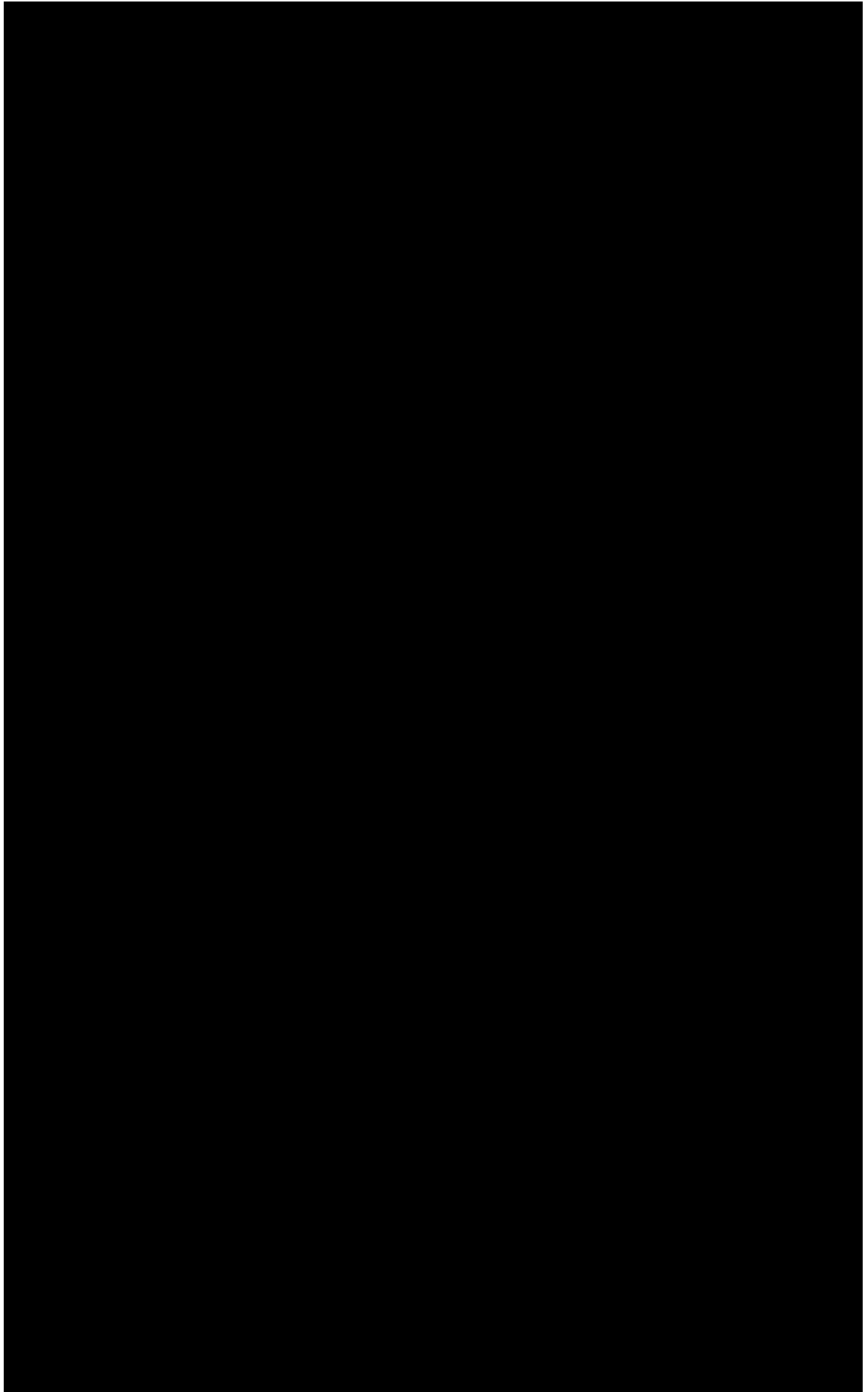
BY MR. BAKER:



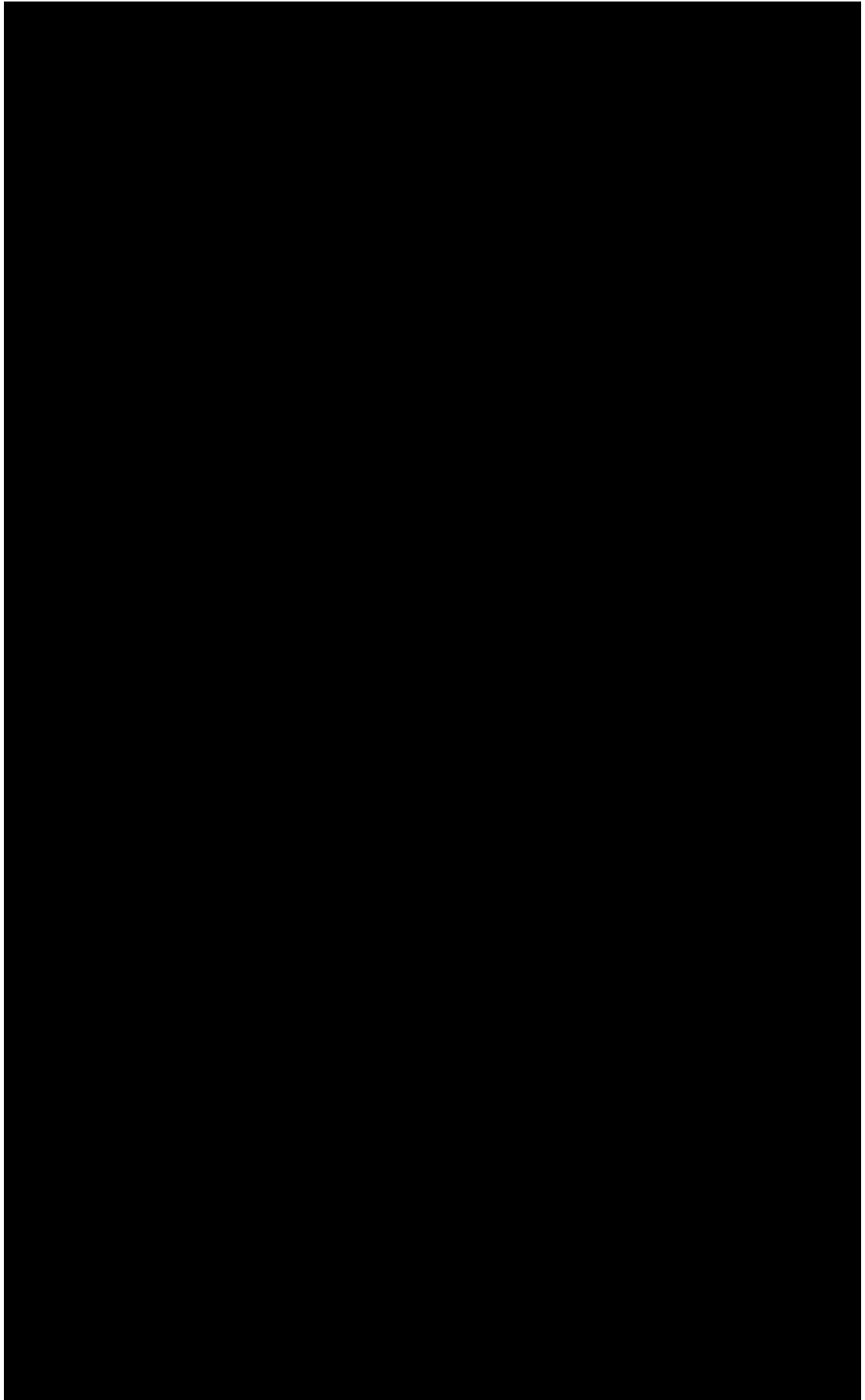
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



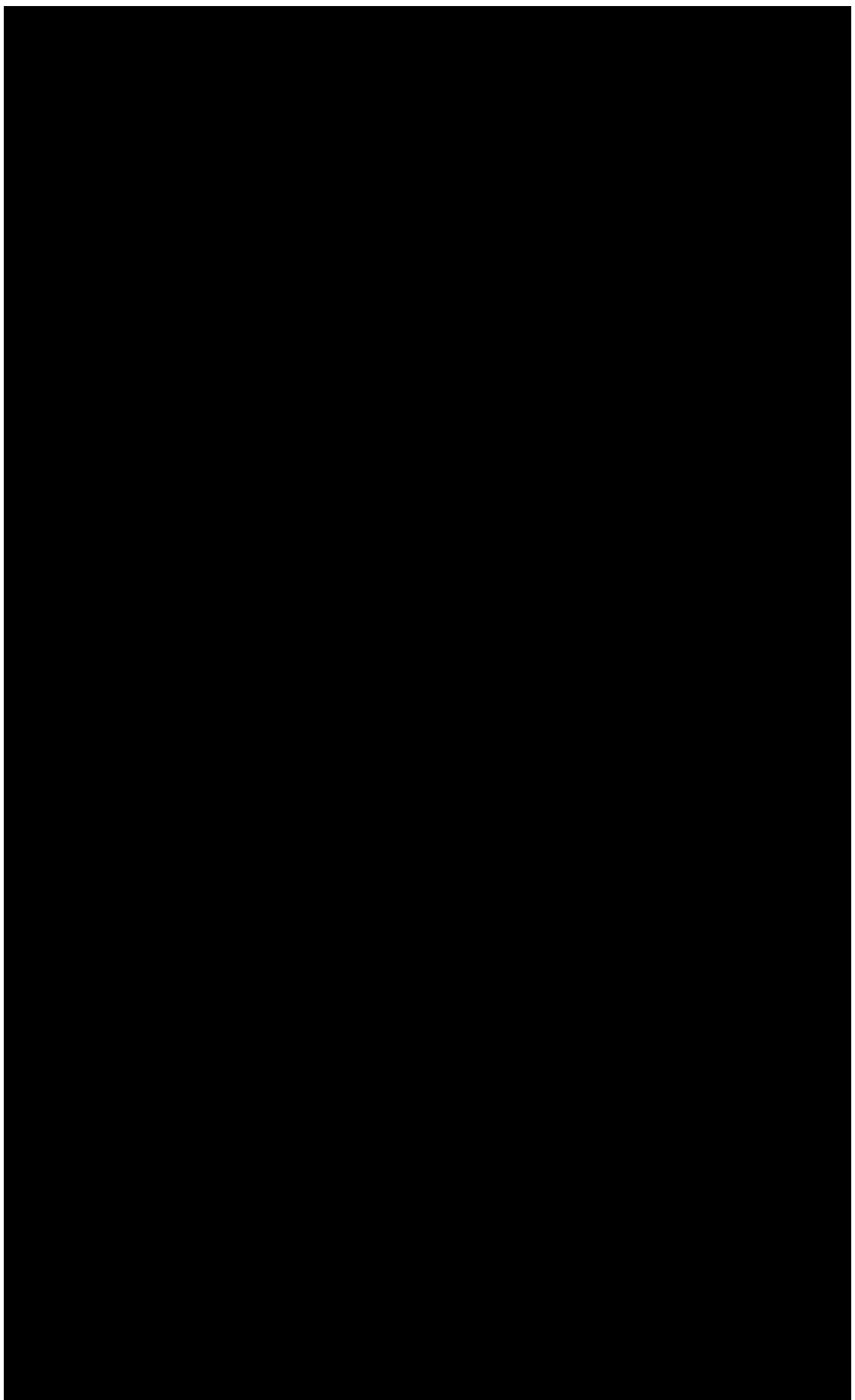
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



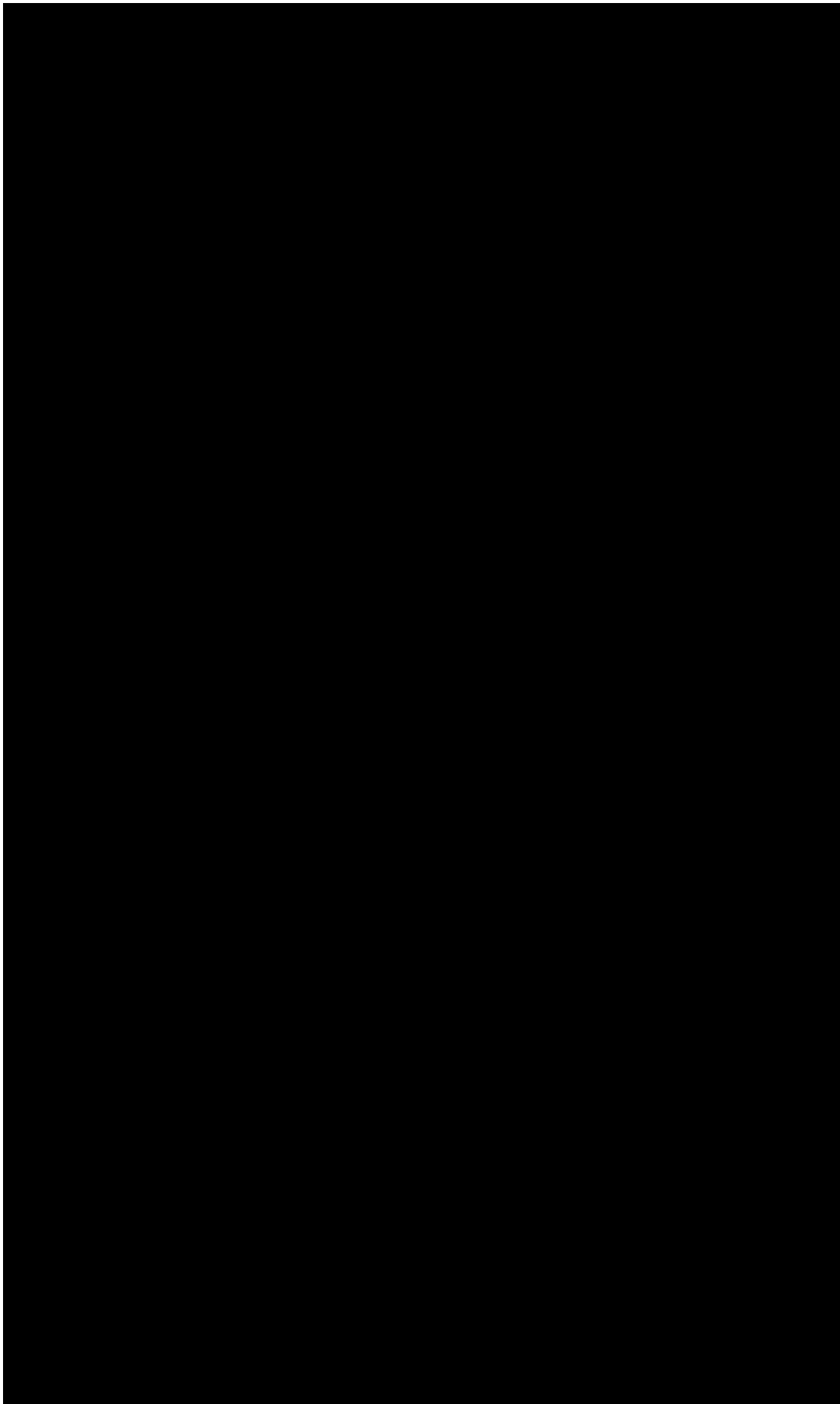
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



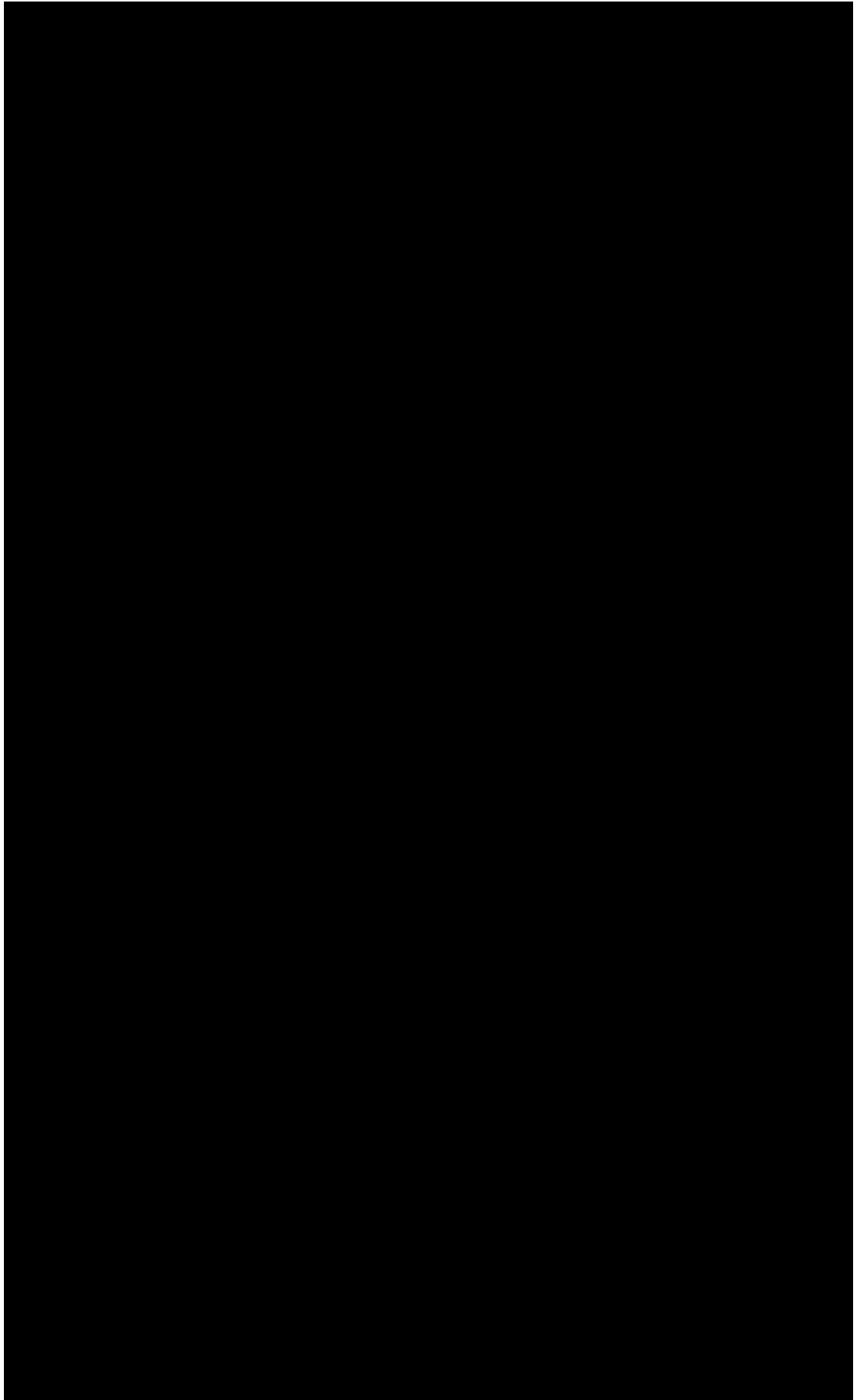
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



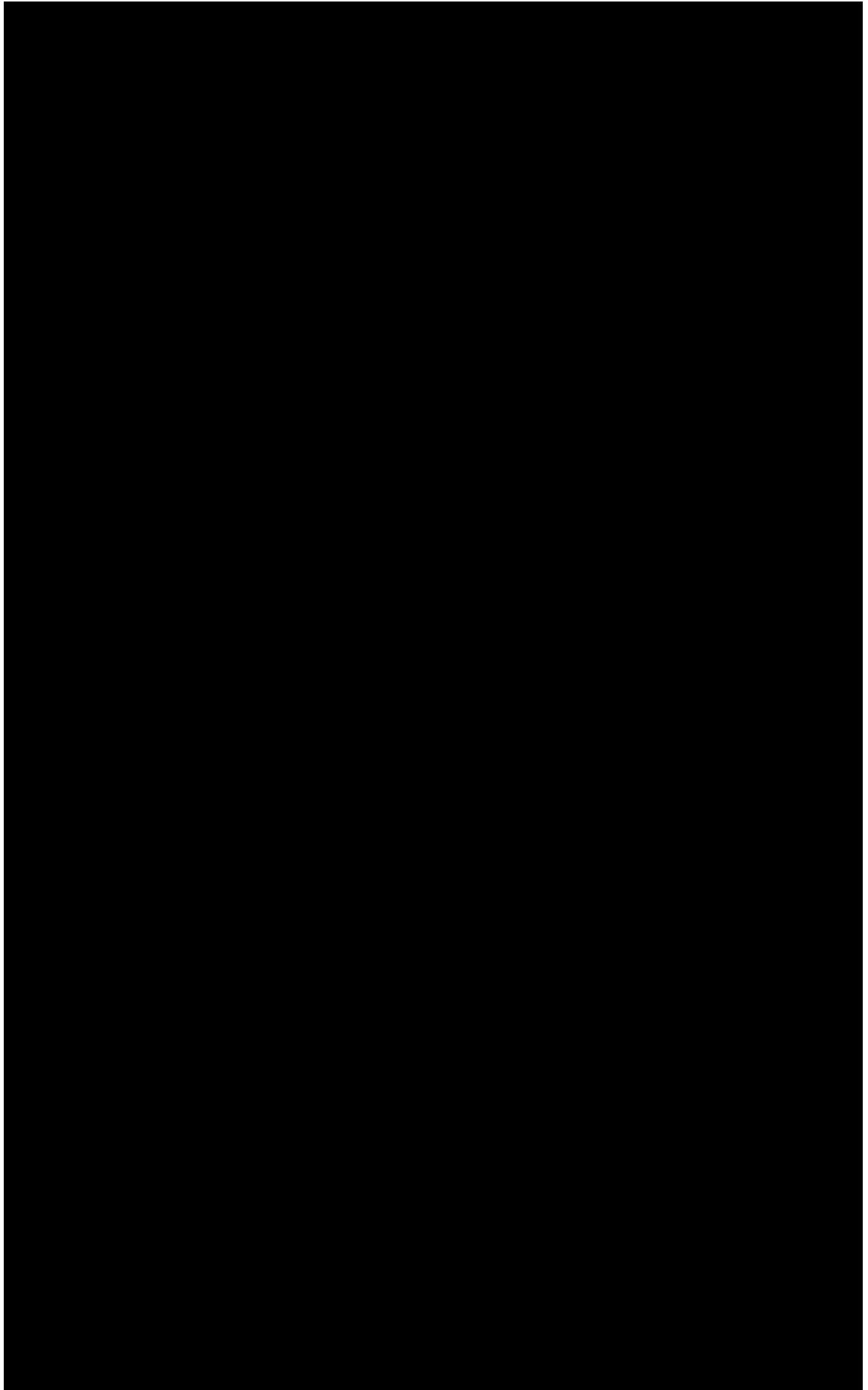
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



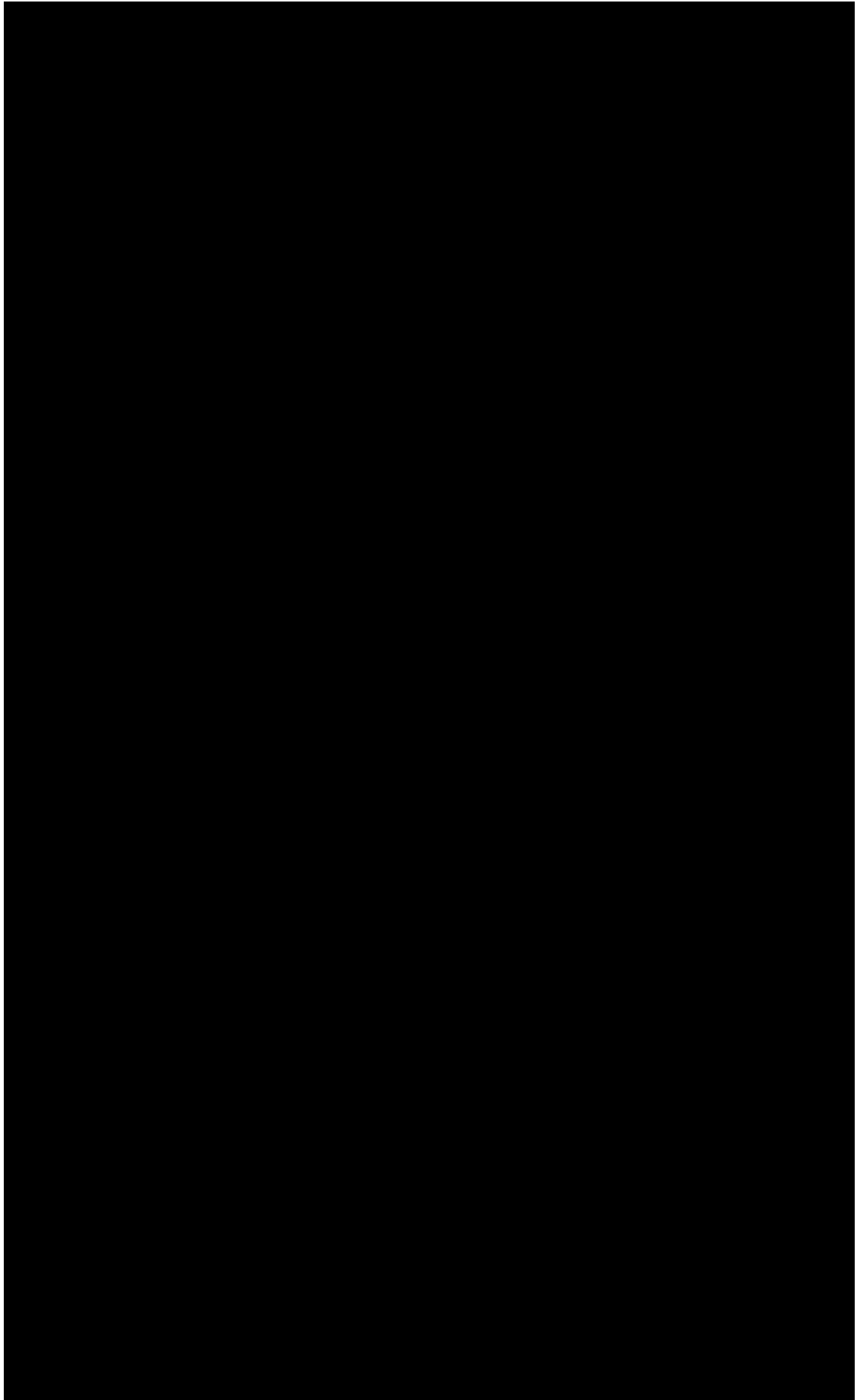
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1

2

3

4

Q Because they needed further due
diligence done to comply with the DEA requirements
of suspicious order monitoring, right?

7

MR. BUSH: Objection.

8

BY MR. BAKER:

9

Q Is that right?

10

MR. BUSH: Objection.

11

THE WITNESS: I don't know if that was a
DEA requirement that every single one get followed
up on. I erred on the side of caution when I did
this during the time I did it.

15

BY MR. BAKER:

16

Q Okay. Because you were trying to comply
with the context of what the DEA required under
suspicious order monitoring, correct?

19

MR. BUSH: Objection.

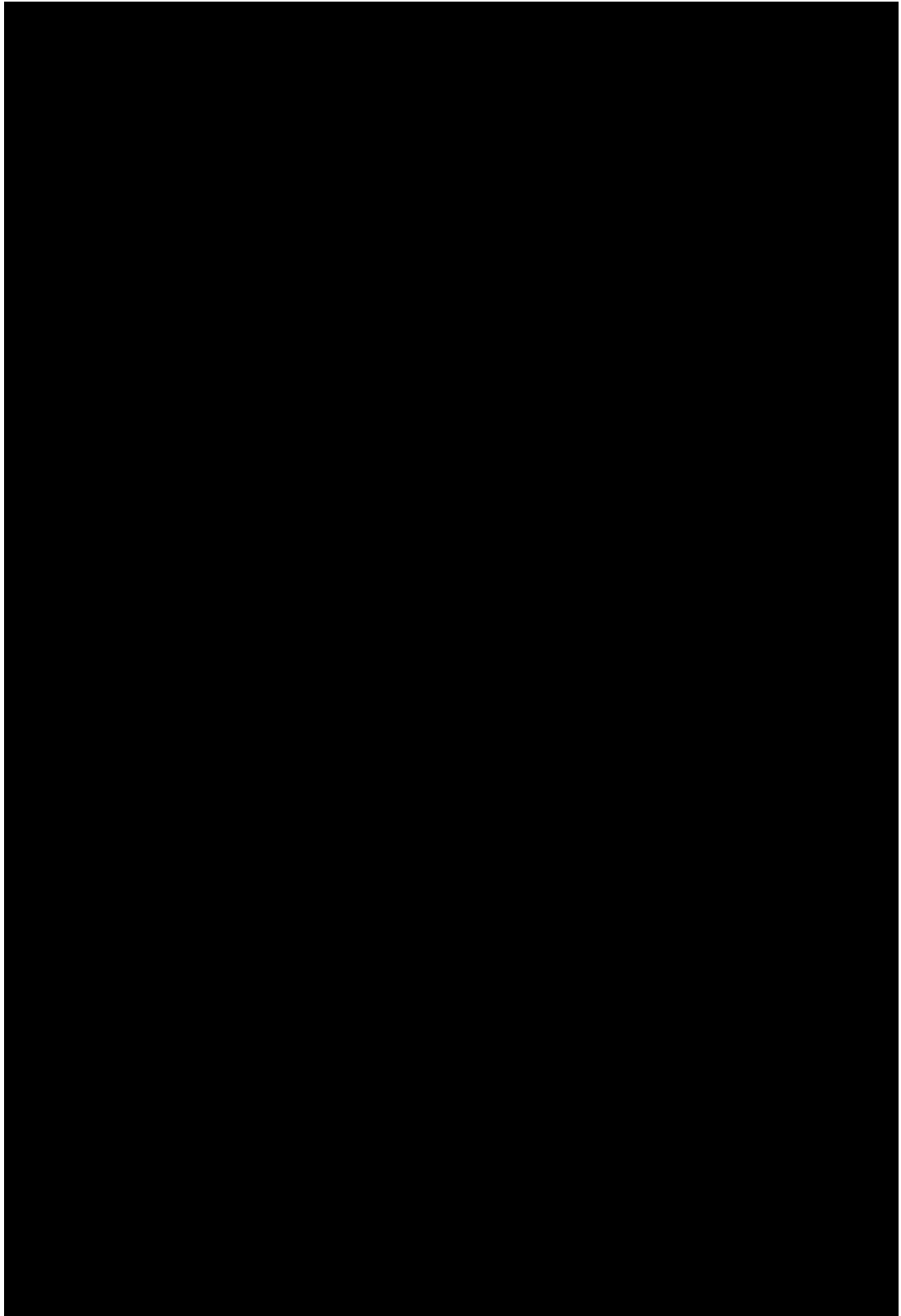
20

THE WITNESS: I always looked at it as
I'm trying to ensure that to the best of my
ability that no bottles were diverted.

23

24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

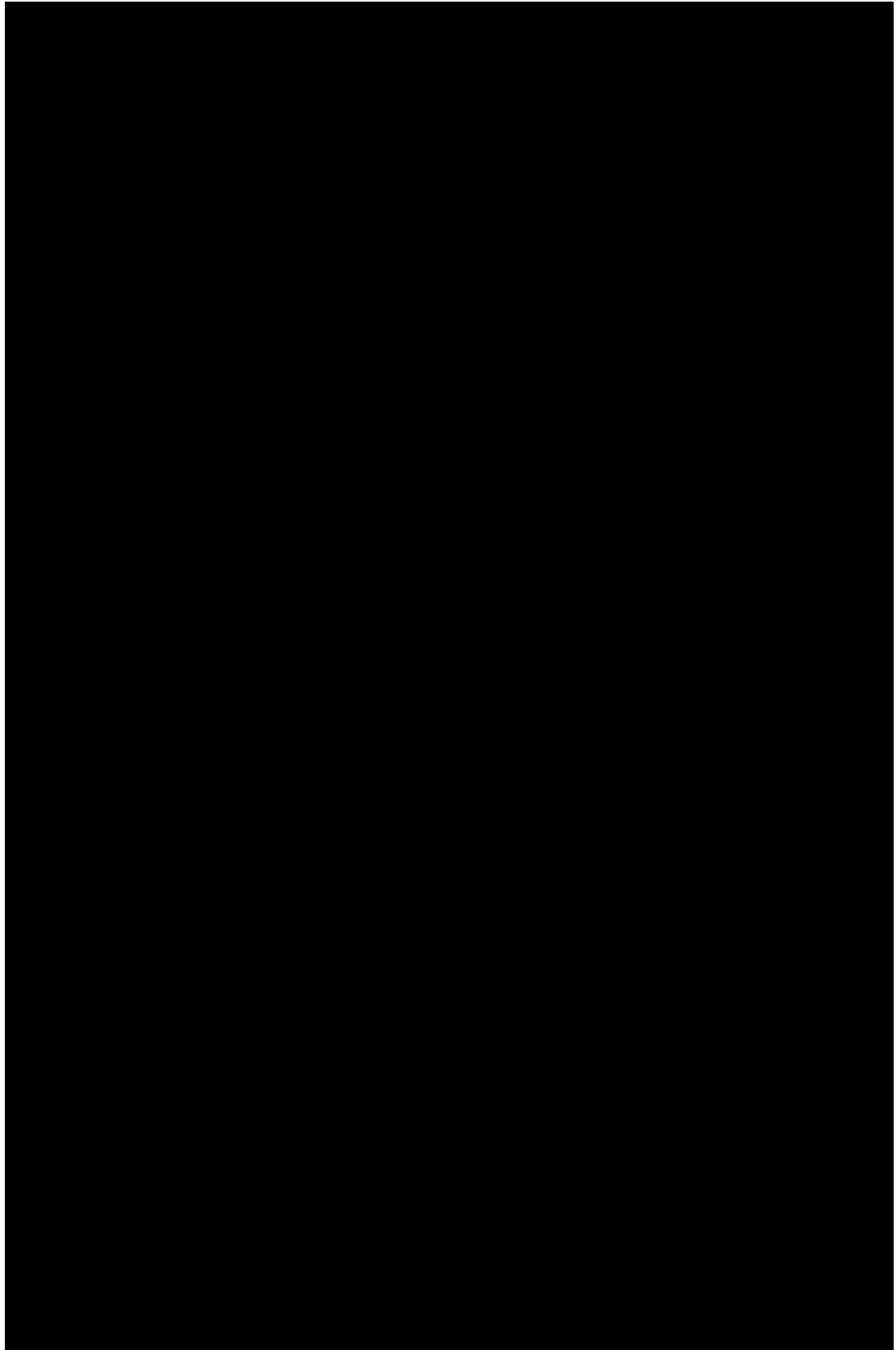


22 Q In other words, investigation required
23 at a minimum that you do some additional due
24 diligence of a HCP or hydrocodone combination

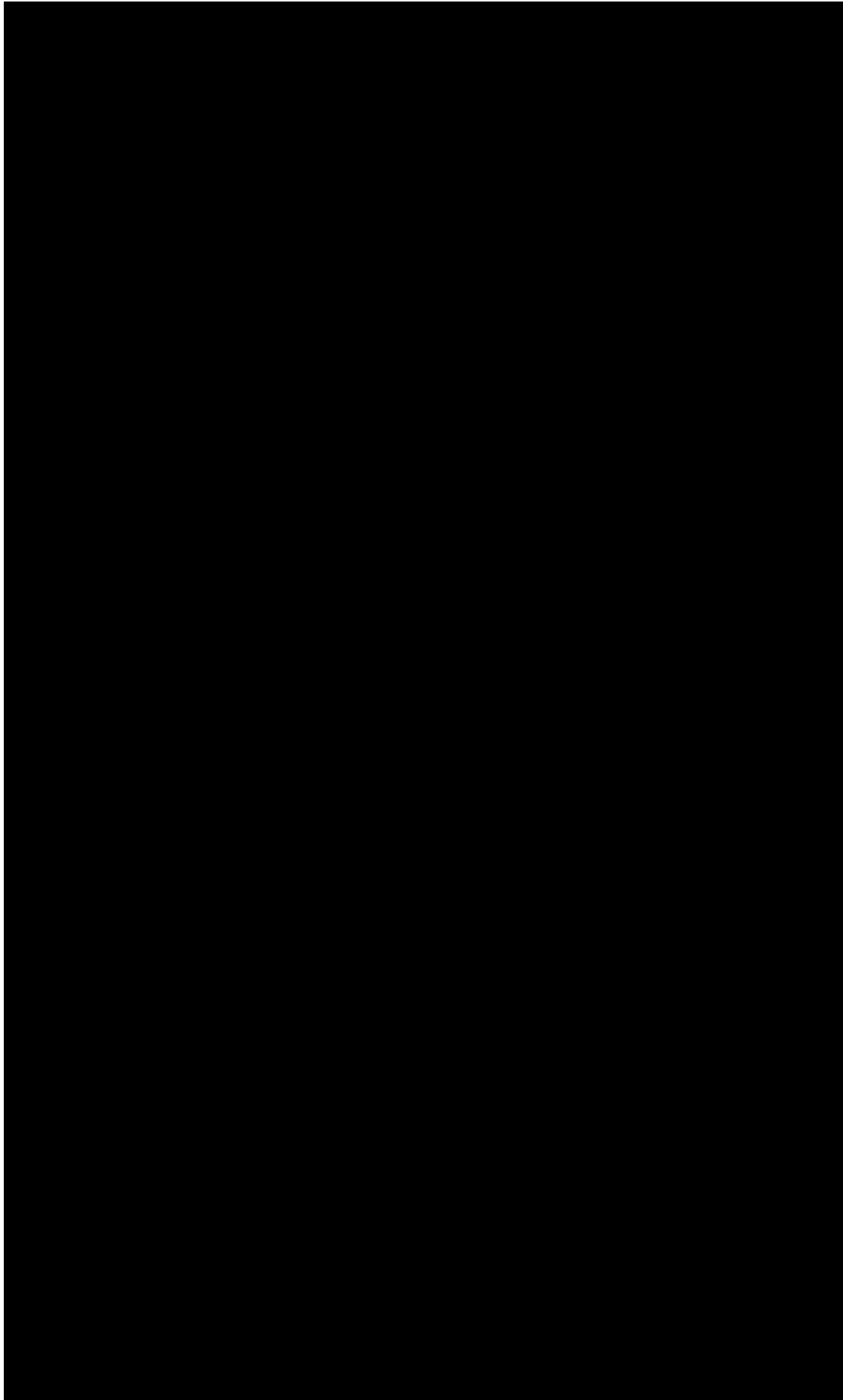
1 product that showed up on the IRR, correct?

2 A Yes.

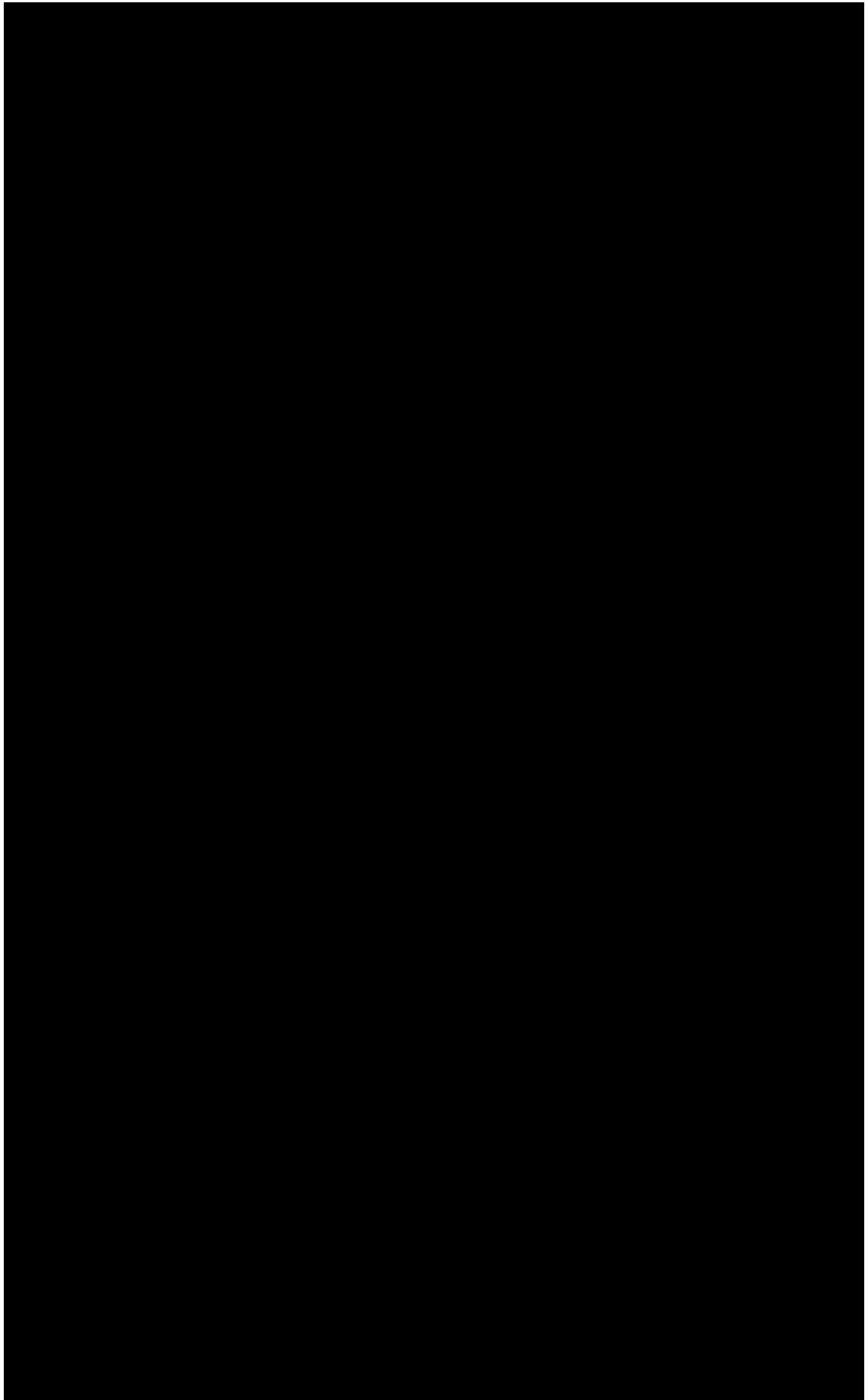
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



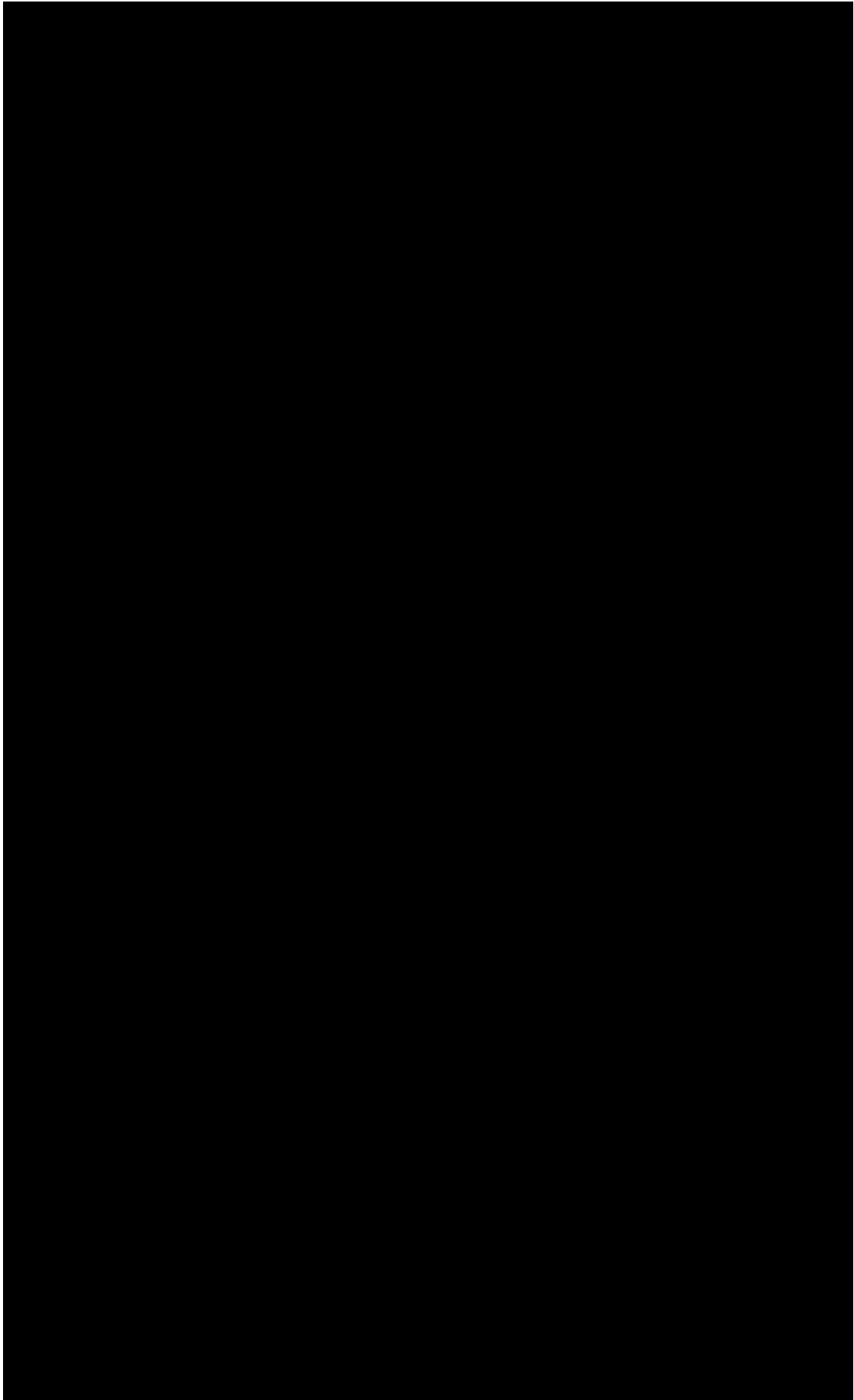
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



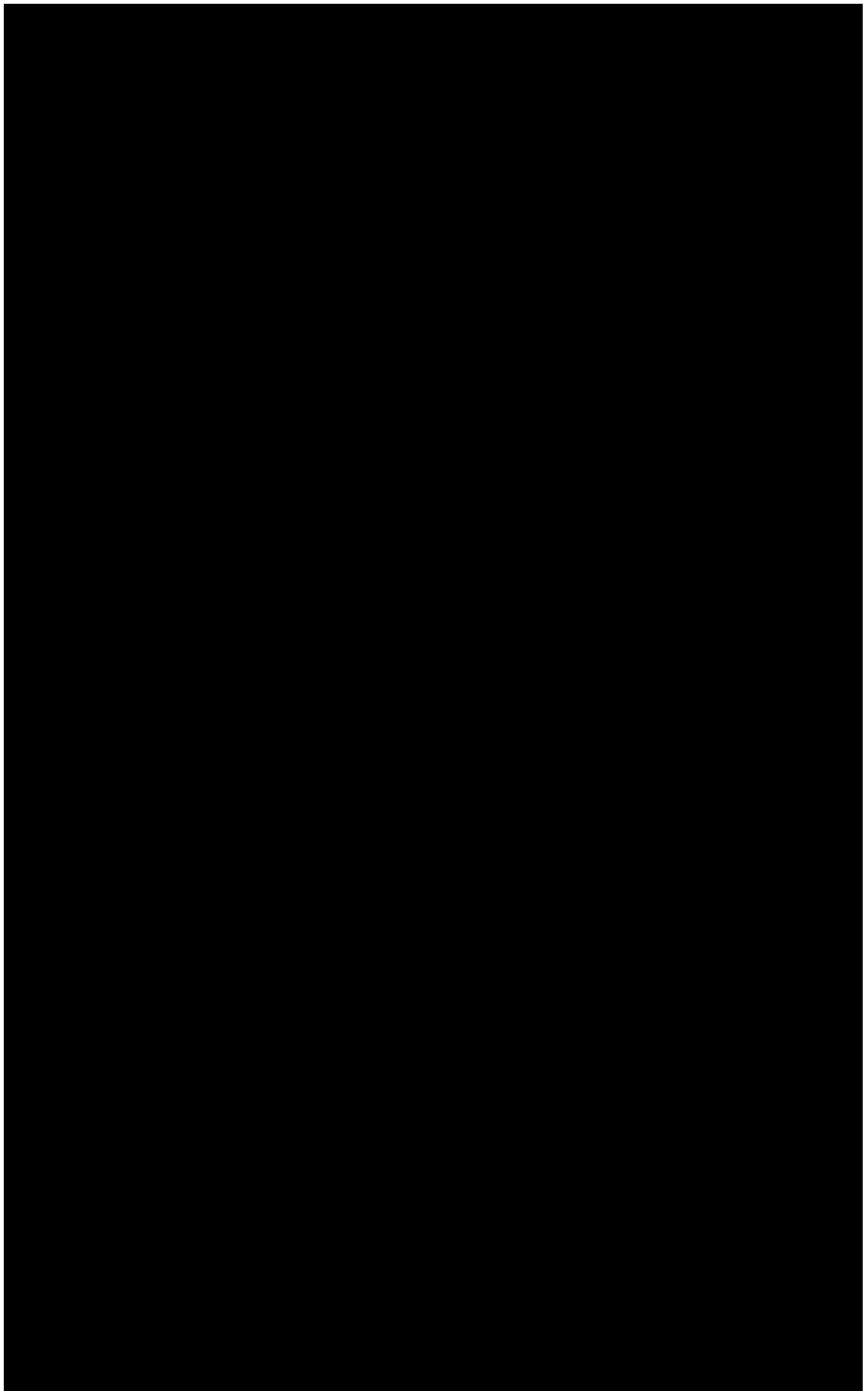
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



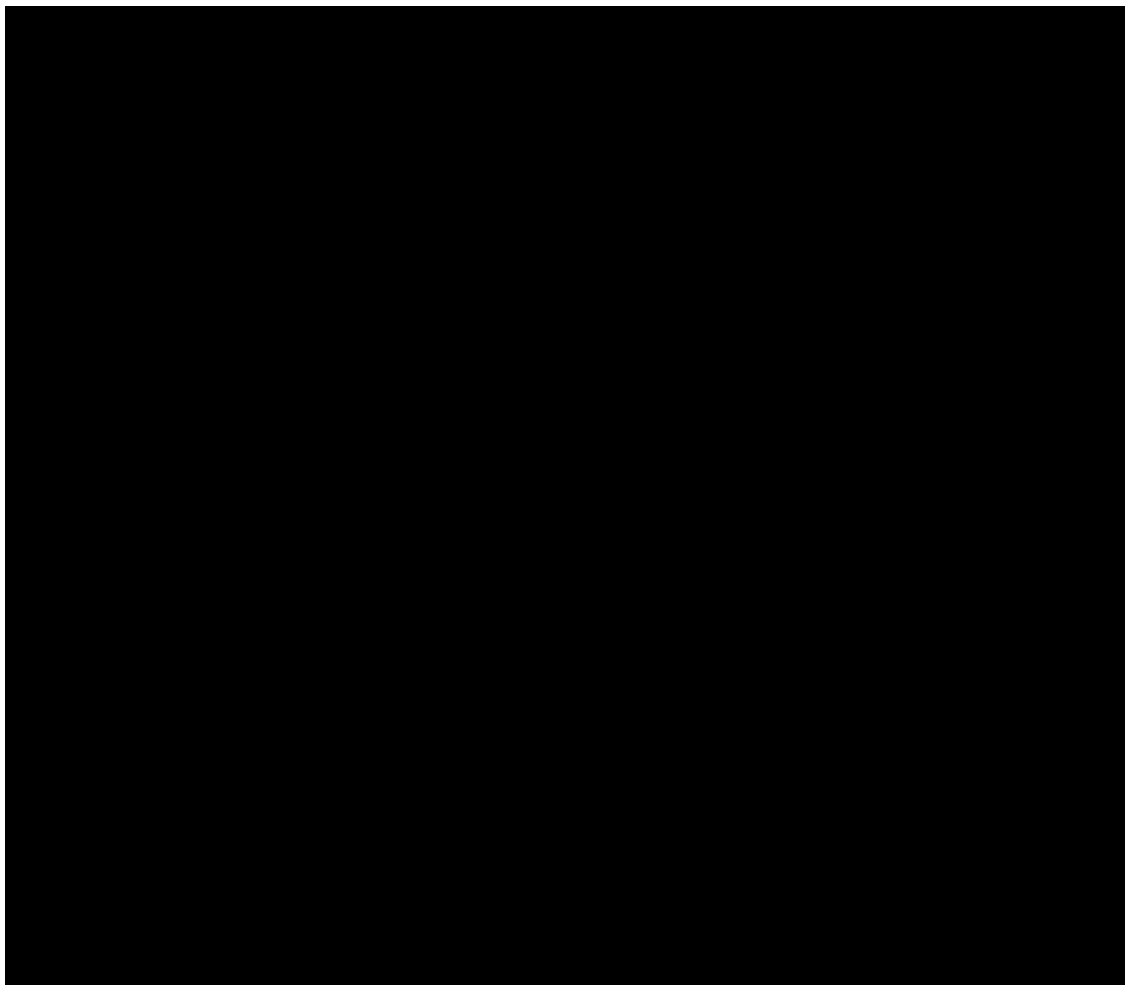
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



1
2
3
4
5
6
7
8
9
10
11
12
13



14

CROSS-EXAMINATION

15 BY MR. BUSH:

16 Q Mr. Mortelliti, you recall that you were
17 asked some questions about what you called the
18 green bar?

19 A Yes.

20 Q And Mr. Baker put up on the screen what
21 I think he called an electronic version of the IRR
22 reports.

23 A It was the electronic version, yes.

24 Q All right. And you did not take notes

1 on any electronic version of an IRR, did you?

2 A No. Only green bar.

3 Q And the electric -- green bar copies of
4 the reports were available in some circumstances
5 in places other than Lumberton, right?

6 A Yes.

7 Q And so if there were copies of green bar
8 reports from say Indy or Knoxville, they wouldn't
9 have your handwritten comments on the report that
10 reflected whatever review you had done of any of
11 the items on the report, right?

12 MR. BAKER: Object to form.

13 THE WITNESS: Correct.

14 BY MR. BUSH:

15 Q And where would you have to go to find a
16 copy of an IRR that had your handwritten comments
17 on it?

18 A I kept the six months plus current in my
19 office. After the eighth month, they would go
20 into archives.

21 Q All right. And do you -- I think you
22 did testify a bit about looking for IRRs. Do you
23 recall that subject general -- generally?

24 A Yes.

1 Q And was the IRRs -- or were the IRRs
2 that you were looking for the ones that had your
3 handwritten notes on it?

4 A Yes.

5 Q And was the search that you conducted in
6 Lumberton?

7 A Yes.

8 Q And is where -- is that where those
9 copies were archived?

10 A Yes.

11 Q And -- and I think you also testified
12 about the three-year document retention policy
13 at -- that was in place at Lumberton?

14 A Yes.

15 Q And did you come to understand what had
16 happened to the copies of the IRR reports that had
17 your notes on them?

18 A Yes.

19 Q And what -- what had happened?

20 A They got cleaned up by month. All this
21 out by month until all -- all the years were gone.

22 Q All right. And -- and was that done in
23 accordance with the three-year document retention
24 policy that you testified about?

1 A Yes.

2 MR. BUSH: All right. I have nothing
3 further.

4 RE CROSS-EXAMINATION

5 BY MR. BAKER:

6 Q Where does the three-year document
7 retention policy originate?

8 A I don't know. I -- I -- for compliance,
9 I know OSHA has expectations of two years. I
10 don't know where it originated.

11 Q Well, we've seen e-mails that go way far
12 beyond three years that -- that were saved in the
13 computer systems at CVS, right?

14 A Yeah, that -- yeah, not -- that wasn't
15 my computer. That --

16 Q Yeah, I understand. And that's the --
17 the computer system at CVS is able to store that
18 data, which allowed it to be pulled when we
19 requested it in this case, correct?

20 A Yes.

21 Q Okay. And that computer system at CVS
22 also has a computer copy of the green bar,
23 correct?

24 MR. BUSH: Objection.

1 BY MR. BAKER:

2 Q Right?

3 MR. BUSH: Objection.

4 THE WITNESS: Yes.

5 BY MR. BAKER:

6 Q Okay. And so if somebody destroyed the
7 green bar off the computer system, that would be
8 something in addition to the paper copy that was
9 destroyed, correct?

10 MR. BUSH: Objection.

11 BY MR. BAKER:

12 Q Correct?

13 MR. BUSH: Objection.

14 THE WITNESS: It -- you're asking me if
15 someone intentionally destroyed?

16 BY MR. BAKER:

17 Q If somebody was to have erased the CVS
18 green bars off the computer system, that would be
19 a separate task aside from destroying the paper
20 copies, correct?

21 A Yeah, I had no control over the green
22 bars. How long they stay, when they drop off,
23 I -- I don't know anything about the electronic
24 copies.

1 Q I think you said one of the reasons the
2 documents were destroyed is because of room in
3 warehouses. Do you remember that?

4 A Talking about the paper documents.

5 Q Right. But a computer can store things
6 on a system that doesn't take up a lot of room,
7 correct?

8 A Yes.

9 Q Okay. So why was the computer copy
10 destroyed? Tell me.

11 MR. BUSH: Objection.

12 THE WITNESS: I never had a computer
13 copy of that.

14 BY MR. BAKER:

15 Q I -- well, it comes to you from a
16 computer, correct? The IRR is printed off a
17 computer.

18 A Yeah, not my computer.

19 Q Right. But it -- it pops up on a
20 computer system, and then somebody hits "print,"
21 and you go get the paper copy from that room,
22 correct?

23 MR. BUSH: Objection.

24 BY MR. BAKER:

1 Q Right?

2 A Actually, it was an auto-print to a
3 specific job that's put into the system.

4 Q Right.

5 A So it comes from corporate auto-printed.
6 I would get that green bar first thing.

7 Q Right. But the green bar is kept on a
8 computer, not on a piece of paper. The piece of
9 paper is printed off the computer, correct?

10 MR. BUSH: Objection.

11 THE WITNESS: How long that data is on
12 there, I don't know.

13 BY MR. BAKER:

14 Q No, just listen to my question. The
15 green bar is created on a computer, correct?

16 MR. BUSH: Objection.

17 THE WITNESS: Yes.

18 BY MR. BAKER:

19 Q Okay. And then somebody prints it onto
20 a printer, right?

21 A Well, it's automatic.

22 Q Right. But when it's printed onto a
23 printer, it -- the whole set of data that you
24 print onto the printer still stays -- lives on

1 that computer, correct?

2 A I don't know anything about the
3 corporate computers.

4 Q Oh, come on.

5 A I don't.

6 Q When you -- when you open up and type a
7 Word document in Word -- Microsoft Word and you
8 save it, you can print it, and the paper copy
9 prints out on a printer, right?

10 A Yes.

11 Q Okay. And you have a choice to either
12 save or destroy that document that you print,
13 correct?

14 A I do.

15 Q Okay. But the electronic copy of that
16 document lives on that hard drive of that
17 computer, correct?

18 MR. BUSH: Objection.

19 BY MR. BAKER:

20 Q Right?

21 I mean, everyday common sense, what's
22 the answer to that question?

23 MR. BUSH: Objection.

24 THE WITNESS: It -- yeah, it's

1 somewhere.

2 BY MR. BAKER:

3 Q Right. It's on the hard drive of that
4 computer, right? So if you wanted to go back and
5 reprint it, you could by going into the hard
6 drive, correct?

7 A No, I couldn't. I would have to send a
8 request to some of the people you saw earlier.

9 Q Oh, come on.

10 A That's exactly how it was done.

11 Q Do you own a laptop?

12 A I do, but this green bar --

13 Q Do you --

14 A -- did not come from a laptop.

15 Q Do you understand that when you create a
16 document that you're saving it on your computer in
17 the hard drive of the computer? Do you even
18 understand that?

19 A I never had that on my -- it's on the
20 internet. It's not on my laptop.

21 Q Okay. I'm not talking about the green
22 bar. I'm just using common sense.

23 A Oh, I'm trying to work with you with
24 common sense --

1 Q Okay. If I was --

2 A -- but you're trying to tell me
3 something that doesn't exist.

4 Q If you open up your laptop and type
5 something, and then you hit "Save," it saves onto
6 the computer hard drive, correct?

7 A What's that have to do with the green
8 bar?

9 Q I'm going to explain that to you.

10 A Okay.

11 Q But it saves on the computer hard drive,
12 right?

13 A Sure. In that scenario, yes.

14 Q Okay. And so this system, this computer
15 system through which the IRR green bar document is
16 created, that's a computer-generated document as a
17 result of an order or a set of nightly orders from
18 the pharmacies to the distribution centers going
19 through the SOM computer algorithm process,
20 correct?

21 MR. BUSH: Objection.

22 THE WITNESS: It goes through some
23 warehouse management system computerized.

24 BY MR. BAKER:

1 Q Right. Okay. And when it does, it then
2 lives on the computer until it is -- until it is
3 printed onto a physical piece of paper, correct?

4 MR. BUSH: Objection.

5 BY MR. BAKER:

6 Q Right?

7 MR. BUSH: Objection.

8 THE WITNESS: I don't know how long it
9 lives on the computer.

10 BY MR. BAKER:

11 Q I'm not asking you how long. It's on
12 the computer and then you can print it, right?

13 A No. No.

14 Q Come on.

15 A It's automatically sent to a green bar
16 machine that prints it out.

17 Q Yeah, there's data --

18 A There's no --

19 Q The data --

20 MR. BUSH: Hold on. Let him finish.

21 THE WITNESS: Let me explain. There's
22 no pulling up a computer, hit "Print" now, "Save."
23 There's none of that.

24 BY MR. BAKER:

1 Q I understand. If --

2 A For whatever reason, if the thing jams
3 up, I don't know, something I get --

4 Q Where is the server?

5 MR. BUSH: Hold on. Let him finish his
6 answer, please.

7 BY MR. BAKER:

8 Q Go ahead.

9 A You've got to ask them to resend the
10 print jobs. They have print jobs. I think that
11 was B106R or something, so you would have to
12 request that. You would have to request that for
13 DEA if they did an audit.

14 Q Okay. Where is the data that exists for
15 what is put onto that green bar? Where -- where
16 does it live?

17 A I -- I don't know. Corporate. That's
18 the only thing, corporate.

19 Q And that would be in Woonsocket, Rhode
20 Island?

21 A I -- I'm assuming that.

22 Q Okay. On a computer system there?

23 A On some warehouse management system.

24 Q Okay. Did you check that before you

1 came to your deposition?

2 A No. Why would I?

3 Q Okay. For the same reason that you went
4 and hunted for the paper copies.

5 A The paper copies had my information on
6 it. I would have loved to have been able to
7 present that.

8 Q Correct. But the -- the number that
9 appeared on the IRR, that would be on the
10 documents that are inside the computer system in
11 Woonsocket, Rhode Island, not the paper copy.

12 MR. BUSH: What number?

13 BY MR. BAKER:

14 Q The number of hydrocodone combination
15 products that popped on the IRR daily would exist
16 on that green bar that's inside the computer
17 system in Woonsocket, correct?

18 MR. BUSH: Objection.

19 THE WITNESS: It would look like what
20 you sent me.

21 BY MR. BAKER:

22 Q Sir, would that be correct?

23 A It would look like what you put on the
24 board earlier.

1 Q Okay. But it could be converted to the
2 green bar, correct?

3 MR. BUSH: Objection.

4 BY MR. BAKER:

5 Q That data could be converted to the
6 green bar.

7 MR. BUSH: Objection.

8 BY MR. BAKER:

9 Q Is that right?

10 A I -- I don't know how that works. I
11 never thought about it.

12 Q Okay. If anybody destroyed those green
13 bars, it was CVS, right?

14 A After the three years, yes.

15 MR. BAKER: That's all I have. Thank
16 you.

17 MR. BUSH: All right. Thank you.

18 THE VIDEOGRAPHER: The time is 4:19 p.m.
19 January 23rd, 2019. Going off the record,
20 completing the videotaped deposition.

21 (Whereupon, the deposition of

22 HENRY JOHN MORTELLITI, III was concluded
23 at 4:19 p.m.)

24

1 CERTIFICATE OF CERTIFIED SHORTHAND REPORTER

2 The undersigned Certified Shorthand Reporter
3 does hereby certify:

4 That the foregoing proceeding was taken before
5 me at the time and place therein set forth, at which
6 time the witness was duly sworn; That the testimony
7 of the witness and all objections made at the time
8 of the examination were recorded stenographically by
9 me and were thereafter transcribed, said transcript
10 being a true and correct copy of my shorthand notes
11 thereof; That the dismantling of the original
12 transcript will void the reporter's certificate.

13 In witness thereof, I have subscribed my name
14 this date: January 26, 2019.

15

16

17 _____
LESLIE A. TODD, CSR, RPR

18 Certificate No. 5129

19 (The foregoing certification of
20 this transcript does not apply to any
21 reproduction of the same by any means,
22 unless under the direct control and/or
23 supervision of the certifying reporter.)

24

INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition. It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

1 - - - - -

2 E R R A T A

3 - - - - -

4 PAGE LINE CHANGE

5 _____

6 REASON: _____

7 _____

8 REASON: _____

9 _____

10 REASON: _____

11 _____

12 REASON: _____

13 _____

14 REASON: _____

15 _____

16 REASON: _____

17 _____

18 REASON: _____

19 _____

20 REASON: _____

21 _____

22 REASON: _____

23 _____

24 REASON: _____

ACKNOWLEDGMENT OF DEPONENT

I, _____, do hereby
certify that I have read the foregoing pages, and
that the same is a correct transcription of the
answers given by me to the questions therein
propounded, except for the corrections or changes in
form or substance, if any, noted in the attached
Errata Sheet.

HENRY JOHN MORTELLITI, III

DATE

Subscribed and sworn to
before me this

_____ day of _____, 20____.

My commission expires: _____

Notary Public